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ABSTRACT

The proceedings of a seminar on state postsecondary education institutional authorization and oversight are presented. The contents are as follows: introduction by Louis Rabineau; "A Governor's View," by Otis R. Bowen; "To Colorado Springs and Beyond," by Richard M. Millard; "A Review of the Study of State Oversight in Postsecondary Education," by Steven M. Jung; reactions to the American Institutes for Research Study from a state perspective by T. Edward Hollander, from a national or federal perspective by John D. Phillips, from an accreditation perspective by William K. Selden, and from a federal perspective by Alfred Moye; "Review of the Recommendations of the General Accounting Office in Its Draft Report," "The Office of Education's Eligibility Process--What Assurance Does It Provide?" and the response of the U.S. Department of Health, Education, and Welfare by John Proffitt; and recent developments at the Federal Trade Commission. A summary and synthesis of the conference is presented by Thurston E. Manning. Comments from the work sessions are presented, and "A Study of State Oversight in Postsecondary Education" Executive Summary of the Final Technical Report) by the American Institutes for Research is appended. (SW)

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STATE POSTSECONDARY EDUCATION INSTITUTIONAL AUTHORIZATION AND OVERSIGHT

A National Report and Inservice Education Program
Colorado Springs, Colorado
July 11-14, 1978

Proceedings of the Conference

U.S. DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION

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Report No. 114

Education Commission of the States
Denver, Colorado

Warren G. Hill, Executive Director

October 1978

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State Higher Education Executive Officers
United States Department of Defense
Veterans Administration

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MEMBERS OF THE CONFERENCE PLANNING COMMITTEE

Merlin Anderson
Administrator
Nevada Commission of Postsecondary
Institutional Authorization

Joseph Clark
President
Joseph A. Clark Associates

Gordon K. Davies
Director
State Council of Higher Education
of Virginia

C. Wayne Freeberg
Executive Director
Florida State Board of Independent
Colleges and Universities

Steven M. Jung
Senior Research Scientist
American Institutes for Research in
the Behavioral Sciences

Thurston E. Manning
Director
Commission on Institutions of
Higher Education
North Central Association of Colleges
and Schools

Richard M. Millard
Director
Postsecondary Education Department
Education Commission of the States

N. Edd Miller
President
University of Maine, Portland-Gorham

John R. Proffitt
Director
Division of Eligibility and Agency
Evaluation
Bureau of Postsecondary Education
U.S. Office of Education

Ronald S. Pugsley
Chief, Accrediting Agency Evaluations Branch
Division of Eligibility and Agency
Evaluation
Bureau of Postsecondary Education
U.S. Office of Education

Louis Rabineau
Director
Inservice Education Program
Education Commission of the States

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PREFACE

We in the U.S. Office of Education are most grateful to the staff of the Education Commission of the States — notably Louis Rabineau, Richard Millard and Janet Clarke — for their fine work in making this conference a great success. We are also very appreciative of the superb work of Steven Jung and his colleagues at the American Institutes for Research that has resulted in the excellent report of the *Study of State Oversight in Postsecondary Education*, around which the conference was built.

The study conducted by AIR and this conference represent the first substantial efforts on the part of the U.S. Office of Education to address significant issues in the area of state oversight of postsecondary education in relation to institutional eligibility for federal funding. Because of the importance of these issues, and their apparent timeliness relative to other priorities, I anticipate that the study report and the conference proceedings will have a notable impact upon policy deliberations within the Office of Education and upon future policy directions taken by the office.

John R. Proffitt
Director, Division of Eligibility
and Agency Evaluation
U.S. Office of Education

INTRODUCTION

Louis Rabineau
Director, Inservice Education Program
Education Commission of the States

On July 11-14, 1978, in Colorado Springs, a seminar was held that included perhaps the most comprehensive analysis and discussion to date on a topic crucial to the states and to postsecondary education — "State Postsecondary Education Institutional Authorization and Oversight". The proceedings of the seminar, attended by over 150 state, regional and national leaders, are produced in this report in the hope they may be useful to those involved throughout the country in this vital issue.

In his keynote address, Governor Otis Bowen of Indiana reviews the issue of state oversight from experience both as a governor and as the immediate past chairman of the Education Commission of the States (ECS). Governor Bowen noted the importance and urgency of the development of an appropriate state role in institutional authorization and oversight. Richard Millard, director of the ECS Department of Postsecondary Education, highlighted the historical background of the states and ECS' involvement and introduced the report and reactions to the *Study of State Oversight in Postsecondary Education*, recently completed by the American Institutes for Research (AIR) for the U.S. Office of Education.

Following a review by Steven Jung, AIR senior research scientist and one of the authors of the study, of the highlights of the study itself and the recommendations contained in the report, three knowledgeable educators offered their reactions — T. Edward Hollander, chancellor of the New Jersey Department of Higher Education; John Phillips, president of the National Association of Independent Colleges and Universities and former Deputy U.S. Commissioner for Postsecondary Education; and William Selden, a nationally known consultant in higher education. Deputy U.S. Commissioner for Higher and Continuing Education, Alfred Moyé, followed the three commentators with a brief statement on the study from the viewpoint of the U.S. Office of Education.

Considerable discussion and consternation resulted from reports of proposed federal activity. John Proffitt, of the USOE Division of

Eligibility and Agency Evaluation, reviewed the recommendations of the General Accounting Office in its draft report "The Office of Education's Eligibility Process — What Assurances Does It Provide" and summarized the response of the U.S. Department of Health, Education and Welfare. Reactions were mixed to a report of a recent action of the Federal Trade Commission by FTC staff attorneys Terry Latanich and Walter Gross. Immediately prior to the seminar, the FTC had approved the form for a "Trade Regulations Rule for Vocational and Correspondence Schools." At the date of this publication, none of these — the GAO report, the DHEW response or the new FTC rule — had been officially released.

Following an informal luncheon panel session, chaired by Kenneth Fischer of the Postsecondary Education Convening Authority, concerning the role and future of such organizations as the Council on Postsecondary Accreditation, the Federal Interagency Committee on Education, the National Association of State Administrators and Supervisors of Private Schools and the Veterans Administration, a summary and synthesis of the seminar was given. This summary and synthesis, thoughtfully prepared and delivered by Thurston Manning, director of the Commission on Institutions of Higher Education of the North Central Association of Colleges and Schools, was published separately by the Education Commission of the States in September 1978 and distributed widely to the seminar invitees and participants and to other interested parties.

Throughout the seminar, working party discussion groups were scheduled in order to give each participant the opportunity to explore the issues concerning the topic. The questions, presented for consideration by each of eight working party groups, spanned the total realm of the topic and are themselves an agenda of concern for the future.

The cosponsors — the Inservice Education program of the Education Commission of the States and the U.S. Office of Education Division of Eligibility and Agency Evaluation — as well

as the cooperating agencies are to be complimented for their efforts in developing and implementing so cogent a program. The participants during the seminar and those persons reading this report are in the debt of all these organizations. Included in this appreciation must be the skilled leaders of the working parties and the seminar planning committee.

Special thanks are due to Janet Rogers Clarke, research assistant at ECS, who served effectively as conference coordinator; Ronald

Pugsley, of the USOE Division of Eligibility and Agency Evaluation, who attended skillfully to so much of the planning; David Mirsky, of Yeshiva University, who provided the conference notes from the seminar; and Tom James, who provided such excellent editing services. Overall final editing and the production and publication of this report were provided by Nancy M. Berve, associate director of the ECS Department of Postsecondary Services, with the very able assistance of Martha Kaufman.

Institutional Authorization and Oversight

A NATIONAL REPORT AND INSERVICE EDUCATION PROGRAM

COSPONSORS

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United States Office of Education

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Education Commission of the States

Cooperating Agencies

Council on Postsecondary Accreditation
Federal Interagency Committee on Education
National Association of State Administrators
and Supervisors of Private Schools
National Conference of State Legislatures

National Governors Conference
Postsecondary Education Convening Authority
State Higher Education Executive Officers
United States Department of Defense
Veterans Administration

Four Seasons Inn
Colorado Springs, Colorado
July 11-14, 1978

Tuesday, July 11, 1978

2:00 p.m.

Registration

Convention Lobby

2:30 p.m.

Meeting: Planning Committee

Ballroom 2

5:00 p.m.

Reception

Ballroom 2

Dinner

• Welcome

John Proffitt, Director, Division of Eligibility and Agency Evaluation, U.S. Office of Education

• Conference Preview

Louis Rabineau, Director, Inservice Education Program, Education Commission of the States

• Introduction

Elizabeth Johnson, Member, Oregon Educational Coordinating Commission, Past Chairman, ACB

• Keynote Address

Otis R. Bowen, M.D., Governor of Indiana

9:00 p.m.

Meeting (1): Working Party Leaders

Hospitality Room

Meeting (2): Members of Wednesday Morning Panel

Wednesday, July 12, 1978

8:00 a.m.

Registration

Convention Lobby

8:30-9:45 a.m.

Presentation

Richard M. Millard, Director, Postsecondary Education Department, Education Commission of the States

9:30-10:30 a.m.

Mid-Morning Social for Spouses

Garden Room

10:00 a.m.

American Institute for Research in the Behavioral Sciences Study

Ballroom 2

"A Study of State Oversight in Postsecondary Education"

• Highlights of the Report

Steven Jung, Senior Research Scientist, American Institutes for Research, Palo Alto, California
Chairman: N. Edd Miller, President, University of Maine at Portland-Gorham

Commentators

State Perspective

E. Edward Hollander, Chancellor, New Jersey Board of Higher Education

National/Federal Perspective

John Phillips, President, National Association of Independent Colleges and Universities

Accreditation Perspective

William Selden, Consultant

• Discussion

Noon-2:00 p.m.

Luncheon

- Working Parties - Session I
(Each attendee will be assigned to a working party.)

2:00-4:30 p.m.

- Working Parties - Session II

5:00 p.m.

Social Hour - Cash Bar

Joint Meeting of Working Party Leaders and Planning Committee

FREE EVENING

Thursday, July 13, 1978

8:00-10:15 a.m.

Breakfast Session

- A Report from the United States Office of Education

Remarks: Alfred Moye, Deputy Commissioner for Higher and Continuing Education, U.S. Office of Education
John Proffitt, Director, Division of Eligibility and Agency Evaluation, U.S. Office of Education

- Recent Developments at the Federal Trade Commission

Remarks: Terry S. Latanch, Attorney, Bureau of Consumer Protection, Federal Trade Commission
Walter C. Gross III, Attorney, Bureau of Consumer Protection, Federal Trade Commission

Chairman: Peter Muirhead, Former U.S. Deputy Commissioner of Education

10:30 a.m.
Noon

Working Parties - Session III

- State/Federal Interface

Noon-2:15 p.m.

Luncheon

- A Scan of the Future

Interviewer: Kenneth Fischer, Director, Postsecondary Education Convening Authority
Interviewees: Myra Mason, National Association of State Administrators and Supervisors of Private Schools
Kenneth Young, Council on Postsecondary Accreditation
Charles Dollard, Veterans Administration
Col. Robert Zimmer, U.S. Department of Defense
Bernard Michael, Federal Interagency Committee on Education

Ballrooms A & B

Garden Room

Ballroom A

Ballroom A & B

Thursday, July 13, 1978 (continued)

2:30-4:00 p.m.

Working Parties - Session IV

4:30-5:30 p.m.

Social Hour - Cash Bar

4:30 p.m.

Joint Meeting of Working Party Leaders and Planning Committee

5:45 p.m.

Buses leave for Flying "W" (optional)

Garden Room

Friday, July 14, 1978

8:00-9:00 a.m.

Breakfast

9:15-11:30 a.m.

General Session

- Reports from Working Parties
Chairman: Richard Millard

- Summary and "Next Steps"
Thurston Manning, Director, Commission on Institutions of Higher Education, North Central Association of Colleges and Schools

Noon

Adjournment

Ballroom A

Ballroom A

WORKING PARTY LEADERS

- (C) Merlin Anderson, Administrator, Nevada Commission of Postsecondary Institutional Authorization
- (F) Graeme Baxter, Assistant Commissioner for Executive Operations, U.S. Office of Education
- (F) Robert Bullock, Assistant Attorney General in Charge of Consumer Protection, Kentucky
- (C) Joseph Clark, President, Joseph A. Clark Associates, Indiana
- (A) Robert Corcoran, Special Assistant to the Governor for Education, Illinois
- (A) Harold Crosby, President, Florida International University
- (E) C. Wayne Freeberg, Executive Director, State Board of Independent Colleges and Universities, Florida
- (D) W. A. Goddard, Executive Director, National Association of Trade and Technical Schools
- (E) Fred Harclerod, Chairman, Accrediting Commission, National Home Study Council
- (B) Lee Kerschner, Executive Director, Colorado Commission on Higher Education
- (G) Barbara Knudson, Department of Criminal Justice, University of Minnesota
- (H) Sherry Lancaster, Coordinator, Institutional Review and Approval, Council of Higher Education for Virginia
- (A) Kristin Morrison, Associate Professor, English Boston College, Massachusetts
- (D) John Peterson, Chief, Office of Private Postsecondary Education, California
- (B) Ronald Pugsley, Chief Accrediting Agency Evaluation Branch, U.S. Office of Education
- (G) Frank Tredinnick, Jr., Executive Vice President, Association of Independent Colleges and Universities in Massachusetts

A GOVERNOR'S VIEW

The Honorable Otis R. Bowen, M.D.
Governor of Indiana

The effort to which you are addressing yourselves is important for educators and policy makers. It is especially important for those of us in the states, because the states have the basic responsibility for oversight and licensing of postsecondary education. We need to discharge that responsibility with the greatest of care.

I salute the two groups who are cosponsoring this important workshop — the U.S. Office of Education's Division of Eligibility and Agency Evaluation and the Inservice Education Program of the Education Commission of the States. The U.S. Office of Education, through these efforts, should become more sensitive to the interests and needs of institutions and states as each of you react to the American Institutes for Research report, *A Study of State Oversight in Postsecondary Education*, and as you air your concerns about what is and should be happening. The Education Commission of the States, which I had the privilege of chairing during the past year, has demonstrated its unique role in bringing together educators and other leaders in government and cognate agencies and organizations.

I note with pleasure the array of cooperating organizations. This list is testimony to the imperative need to address problems through discussion by many groups that have vital parts to play in coming up with solutions — the Council on Postsecondary Accreditation, the Federal Interagency Committee on Education, the National Association of State Supervisors and Administrators of Private Schools, the National Conference of State Legislatures, the National Governors Association, the Postsecondary Education Convening Authority, the State Higher Education Executive Officers, the United States Department of Defense and the Veterans Administration.

As the professionals and policy makers in the states and as the statewide, regional and national organizations and agencies most responsible for the success of the effort, you will make crucial decisions that will shape the nature of postsecondary education for a long time to come. To remind you of your responsibilities and challenges is superfluous, since your tasks

are difficult, complex and always beset with conflicting pressures. However, I want to share with you the interests and concerns of at least one governor in the area of state licensing and oversight of postsecondary education. I hope my remarks will be of help as you consider these issues in greater detail.

I shall talk about three things. First, I shall comment on why I believe there is increasing interest in the issue. Second, I want to review where I perceive we currently are in licensing and oversight of postsecondary education. Finally, I want to identify what I think needs to be done.

The question of licensing and oversight of postsecondary institutions is not a new one, but the issue has taken on new importance in recent years. There are a number of reasons for this awakening concern. First, the official definition of public interest changed from *higher* education to *postsecondary* education with the passage of the Higher Education Amendments of 1972. Suddenly, instead of dealing with 3,000 institutions in the country, we are concerned with an estimated 14,000. This rich diversity of educational opportunity promises the availability of an institutionalized education program meeting the needs of virtually anyone wishing to pursue postsecondary education or training.

Along with the enlarged universe of institutions, federal and state student aid programs have gone a rapid period of growth. There will be \$4 billion worth of subsidies available to students in the next school year. Unfortunately, there have been a number of scandals in the last few years where institutions have misrepresented the education and job opportunities for graduates. In some instances, these institutions have gone out of business in midcourse, leaving nearly all the students and the federal government liable for guaranteed student loans. All of education suffers under such isolated circumstances, especially when the facts become exaggerated. Government student aid programs are threatened, and the ability to help needy students obtain a legitimate education is jeopardized.

The consumer movement has gained momentum in the last few years. Since education is one of the most important and costly investments that many Americans make, deceitful practices, misleading advertising and disadvantageous contracts are at least as important in education as in the area of consumer loans. Indeed, consumers seem to be most pained by the deceit on the part of some educational institutions, because we place so much importance and faith in the educational system as the way to a better life in America and because we presume that educators should be pace setters in morality and ethics.

The final factor that has intensified concern with state licensing and oversight is the impending decline in the traditional student age group in most places. All institutions will face keener competition for students. There will be increased incentives to adjust educational realities in order to increase enrollment. This could make state oversight of traditional colleges and universities as important as the current concern with proprietary schools.

We are all aware that it is only a small proportion of institutions that cause our problems. Some are not financially stable and face bankruptcy. Some have inferior programs, staffed by poorly trained instructors. Others practice questionable tuition refund practices. Whatever the problem, the state has a role in protecting consumers and taxpayers from those few marginal operators.

A great deal of progress has been made. Laws adopted in most states have improved states' licensing and oversight practices in postsecondary education institutions. In 1973, the Education Commission of the States (ECS) sponsored a national task force to develop model legislation for approval of postsecondary education institutions to operate and for the authorization to grant degrees. Some members of that task force are here and are continuing this important effort. The legislation proposed in the task force report suggested some fundamental components for state law, including the following:

1. To establish minimum standards of educational quality, ethical and business practices, health and safety and fiscal responsibility; and to protect the public against substandard, transient, unethical or fraudulent institutions and practices.

2. To prohibit false or misleading educational practices.

3. To regulate the use of academic terminology in naming educational institutions.

4. To prohibit misleading representation by educational institutions or their agents.

5. To provide for preservation of essential academic records.

As an aside, I am pleased that Indiana has equaled or exceeded all the provisions of the ECS model legislation, according to the American Institutes for Research (AIR) study.

The AIR report indicates that private sector officials in 23, or about half, of the states report some use of the ECS model legislation during the past five years. According to the report, 48 states, as of January 1977, also are exercising some sort of licensing authority over private nondegree-granting institutions, and 43 states have licensing authority for private degree-granting institutions. True progress has been made.

Consumer protection laws are broader in coverage than just education. Virtually all states have laws to prevent unfair or deceptive practices in trade and commerce. These statutes allow states to police deceptive practices. Many of these laws are not part of the state's education laws and regulations, but they provide a major tool to deal with institutional abuse of student consumers. Although the states have come a long way in the development of appropriate legislation, there is a great deal left to do in licensing and oversight of postsecondary education. Many states do not have full protection and a few have almost none. According to the AIR report, state laws that cover much more than the ECS model objectives are outnumbered by those state laws providing no coverage. A good start has been made, but there is a continuing challenge before us.

Two tasks particularly need to be addressed. The first is to identify what needs to be done; the second is to decide how it can be done. The list of what needs to be done is constantly changing. Of high priority is the problem presented by the many new degree-granting institutions that operate across state lines and offer a range of nontraditional programs. Some of these institutions operate only on military bases, which technically may not be subject to state agency oversight. There is a tangled area involving the jurisdictions of the private accrediting agencies. It is not evident who should accredit these wandering educational offsprings, the region of the home institution or the region of the branch campus. The intrusion of these branch campuses complicates the planning and coordination of education within the state. I hope that this conference can make headway in helping to solve this problem.

Another problem is the exemption of certain kinds of institutions from regulation. The most important exemptions allow schools that are accredited, or that existed prior to a certain date, to be regulated indirectly by a professional board (such as cosmetology examiners) or to be incorporated as a charitable or nonprofit institution. These institutions operate with state oversight. Some of these exclusions are based on valid reasons. Others are the result of effective lobbies in the state. If, as I believe, consumer protection in education becomes more important as enrollments decline, present laws must be made more inclusive in some states before a major scandal forces states to act in a hasty manner.

There also is a need for state licensing agencies to coordinate their efforts with other state agencies. State agencies in postsecondary licensing should maintain adequate liaison with the attorneys' general offices and state consumer protection agencies. The state agency needs to coordinate its efforts with the state office responsible for course approval for the Veterans Administration.

It is important that state licensing agencies communicate with each other. Often, it takes the coordination of several states to put a stop to abusive practices. There also needs to be improved communications between the states and the federal offices concerned with institutional eligibility and federal programs. This requires a continued rapport with the accrediting agencies, regionally and nationally.

I note that neither the excellent array of questions to be addressed in the "working parties" (discussion groups) nor the AIR report touches extensively on the need for an interface between approval of institutions, on the one hand, and the licensing of individual practitioners on the other. This topic is outside of the immediate scope of this seminar, but it should be considered at another time. Some of my recommendations may mean more money and more staff. There is also a necessity to strengthen state laws. These efforts can be frustrated unless everyone is sensitive to the political strategies that lead to success.

There are some basic steps necessary to insure improved state laws. One must involve raising the consciousness of governors and legislators regarding the need for oversight of postsecondary education. Good public relations are important because political persons respond to the concerns of their constituents. Public knowledge can help develop a constituency that will keep the need alive and visible.

Another step should be assisting knowledgeable legislators in developing the kind of legislation that addresses the need. It is important to make certain the legislation is accurately and adequately drafted. Private school owners and associations as well as other affected organizations must be involved in this drafting process. The less conflict and divisiveness, the more likely that the legislation will be enacted.

Too often the intent and the practice of government are in conflict. It is important that conflicts between state agencies be discussed, clarified and resolved and that all of the involved administrative agencies understand and support legislative proposals before and after they become law.

These recommendations are perhaps too basic, but they are too often forgotten. Good state government and good state policy are needed to ward off the danger of federal preemption. Education is a state responsibility. We recognize the increasing federal support of students and the desirability of cooperation with the federal government. Because of the constitutional, traditional and fiscal responsibilities of the states, however, we must be reluctant to relinquish claims of authority and responsibility to the federal level. Rather, we must be creative partners with state and federal groups each contributing to the process.

State action is a precondition of accreditation and federal recognition of eligibility. An institution must exist to be accredited or to be eligible for federal funds. States determine the minimal levels of fiscal and educational integrity for institutional operations. This is the foundation on which further assessments of quality and eligibility for federal programs are built. It is a triad, a three-way partnership. We must build it to insure that we provide the best education possible to our citizens, that we protect the interests of taxpayers and that institutions are not saddled with overly restrictive laws, state or federal.

I have stressed the importance of the state role today and pointed out what I believe are some of the critical problems. But I must also emphasize that we need to remain sensitive to the crucial roles played by private accrediting agencies and by the federal government. Private accreditation is a key to insuring educational quality. Therefore standards must be set with the full cooperation of the educational community to be affected.

The federal government is concerned about determining eligibility of institutions to participate in federal student assistance programs.

In general, its agencies depend upon state authorization and accreditation to make their determinations. If the efforts of the states and accrediting groups are not satisfactory, there will be increasing pressure for the federal government to increase its involvement in the affairs of postsecondary education.

You have a tremendous challenge — to make policy and to administer and adjudicate the delicate and yet important matters involved in the oversight role of the states in licensing and authorizing postsecondary educational institutions. Few, if any, challenges in education are more important. And yet you must have much courage in developing and implementing solutions, because often you stand virtually alone amid the cross currents of opinions and pressures. You might take some solace however

in noting, as Edmund Burke said, that "All government, indeed every human benefit and enjoyment, every virtue, and every prudent act, is founded on compromise and barter."

I wish you good luck in your efforts. I can challenge you, point to the difficulty of the task and bid you good luck. I then leave it to each of you to find solutions. I hope my remarks may provide some beacons to guide your deliberations. As Lord William Beveridge noted "The object of government ... is not the glory of rulers or of races, but the happiness of ... man." I wish you well in meeting that objective. If this meeting is successful, and it has the earmarks of success, then the ultimate beneficiaries will be the students and the public whom we all serve.

TO COLORADO SPRINGS AND BEYOND

Richard M. Millard
Director, Postsecondary Education Department
Education Commission of the States

Alfred North Whitehead has described every moment as the culmination, convergence and synthesis of diverse histories, as a unique event in itself in which things happen and as a new beginning shaping the future. This meeting at Colorado Springs uniquely illustrates what Whitehead was talking about. It grows out of the congruence of a series of historical developments, some recent and some of much longer duration, which highlight the importance today of state oversight and authorization of institutions to operate and the need not only for reconsideration of institutional, state and federal policy issues but for critical concern with the practical operational issues involved in effective oversight by state authorizing agencies.

What I would like to do is identify some of these converging factors, highlight the objectives of this seminar and suggest some of the directions or impact that may grow out of it if our deliberations are as fruitful as all of us hope they will be. First, suppose we look briefly at some of the converging factors that have brought about the seminar and, in fact, made it necessary.

I hardly need remind you that back of all other developments leading to today is not eligibility for federal funds, nor the relation of authorization to accreditation nor even the present level of concern with information for students — as important as these are — but the basic fact that it is in the states and by the states that educational institutions have been and are chartered, incorporated, licensed and/or authorized to operate. At a meeting in Keystone, Colorado, in July 1977, on "The Maintenance of Academic Quality in a Time of Uncertainty," I pointed out to many in this group that the involvement of states with the formation of schools and colleges is coextensive with their existence as states.

You will recall that the New York Board of Regents, established by the first session of the New York state legislature, was in fact the first state agency established to authorize institutions to operate, to grant degrees, to require reasonable quality and to insure that institu-

tions would serve "the best interests of the people of the state as a whole." You will also recall that even in the Dartmouth case (1819) the Supreme Court, which upheld the conditions of a charter as a contract, did not challenge the basic responsibility of the state to license or charter or to set the conditions under which a charter or license could be granted.

This is ancient history and you are as aware as I am that until relatively recently, with some exceptions, states have not taken this responsibility very seriously. It is, however, important to recall it and to keep it in mind if for no other reason than to keep perspective straight. State authorization has its roots in the constitutional responsibility of the states for education. It is not the result of a federal or any other external mandate. With the current size, importance and complexity of postsecondary education, it is crucially important that it be done and be done well for the best interests of the people of the state and the nation as a whole, whether or not federal programs or anything else utilized or depended upon it.

Having recognized this, however, there is no question that events since World War II, including development of federal programs, have radically changed the perception of the importance of state authorization and have encouraged the states to develop more effective laws and agencies and to take their authorization and regulatory functions far more seriously. As you are well aware, in 1950 only a handful of states exercised their authorizing functions effectively. In most states institutions were authorized by articles of incorporation granted by the secretary of state. In some states charters were granted directly by the legislature. Today the picture is very different.

By January 1977, 47 states and the District of Columbia had established agencies and exercised some kind of licensing authority over private nondegree or proprietary institutions. Thirty-eight states exercised specific licensing authority over private degree-granting institutions, and an additional five states had laws and agencies primarily for nondegree-granting institutions that covered degree-granting in-

stitutions under certain circumstances. The laws still differ considerably from state to state as do the agencies that enforce them. But the striking factor is the close to unanimous recognition by the states of the importance of the authorizing function and in many cases the need for strengthening it. It should also be noted that in even the three states with no laws some activity to correct the situation is under consideration.

This change has been brought about by a number of things. First, even before World War II, legitimate institutions in some states became concerned about degree mills — institutions offering degrees for substandard, minimal or no work to a gullible public for pecuniary gain. Second, returning veterans under the G. I. Bill sometimes ran into fraudulent or substandard operations in some cases specifically devised to part the veteran from his federal funds. The federal government as well as the states became concerned, and as early as 1952 in the Servicemen's Readjustment Act, Congress began to specify conditions of institutional eligibility for federal funds, including authorization to operate within the state of residence and accreditation by an agency recognized by the U.S. Commissioner of Education as capable of attesting to the quality of instruction offered. Today some 20 federal statutes in addition to this law depend upon the federal eligibility system, including state authorization for awards of federal funds to institutions.

Third is the phenomenal growth of post-secondary and higher education during the 1960s and first half of the 1970s and the opportunities that this presented for less than reputable institutions to take advantage of public desire for education beyond the high school. Fourth has been growing public concern with consumer protection in all fields and the recognition specifically of the need for consumer protection in education beginning in the early 1970s. Fifth has been the series of exposures of fraud, abuse and submarginal operations from the *Life* magazine article of the early 1970s to the recent programs on "60 Minutes," which have increased public awareness.

Sixth has been the Congressional and Administration's concern with fraud and abuse in federal programs, which led, among other things, to the disclosure provisions and extension of the U.S. Commissioner's responsibility to limit, suspend and terminate institutional eligibility in the Education Amendments of 1976. Seventh has been the growing concern in the mid-1970s not just with protection of students from fraud,

abuse and substandard programs, but with supplying students with objective and more complete information in order to make effective choices of institutions and careers in postsecondary education. And, finally, is the growing concern in recent years with off-campus, out-of-state and nontraditional forms of education and the extent to which they do or do not provide real educational benefits.

This list is not exhaustive but illustrative. Along with it have gone other responsive and positive histories that bring us together here. One part of this is, as already noted, the number of states that have taken positive action to develop more effective legislation and agencies to deal with the issue of authorization and that have and are in fact exercising their regulatory functions in a conscientious manner. Closely related has been the growing concern and initiative taken on the part of those agencies and administrators designated to carry out the authorizing functions with (1) the importance of their tasks; (2) the need for communication among themselves about general developments, improved regulations and standards, more effective operations and strengthening state legislation itself; and (3) the need for more adequate interchange with other groups, including accrediting agencies and the federal government concerned with similar but complementary issues.

Fairly early the state administrators of veterans programs had formed the National Association of State Approval Agencies (NASAA) to share common concerns. In connection with the 1971 Minneapolis meeting of NASAA, a group of state administrators of proprietary schools got together, and as a result of that meeting, in addition to one in Washington later that fall, the National Association of State Supervisors and Administrators of Private Schools (NASSAPS) was formed to provide a forum for state authorizing agencies of proprietary and nondegree programs. Since that time NASSAPS not only has grown as additional states have added agencies but has taken the initiative in developing its own studies (1973-1975) of state effectiveness and standards and in determining how the states might assume a more effective role in helping to determine institutional eligibility.

In addition NASSAPS has encouraged important federal studies, has cooperated with other organizations in attempting to develop more effective lines of communication and has been one of the major positive forces leading to a series of meetings such as this at which issues

have been identified and positive action taken. For example, it played a critical role in the Arlie House conference in 1975 sponsored by the Postsecondary Education Convening Authority, which for the first time brought together those agencies responsible for authorizing nonprofit degree-granting institutions — a conference, significantly, on "state licensing of postsecondary educational institutions."

Another part of this positive history was the development of model legislation by a task force of the Education Commission of the States (ECS), completed in June of 1973. The task force itself represented a coalition of legislators, state approval agencies, state higher education agencies, accrediting agencies, the Office of Education, the Veterans Administration and the Federal Interagency Committee on Education. It was financially supported by ECS and a combination of federal agencies. The model legislation that resulted has been utilized by some 23 states in various ways. It has served as a reference point not only in relation to assessment of state legislation, as intended, but also for regulations and to some extent operations since.*

Among the important offshoots of developing the model legislation was planning for the first national conference on consumer protection in postsecondary education, held in Denver in spring of 1974, followed by a second such conference in the fall of 1974 in Knoxville, Tennessee. These conferences for the first time brought together representatives of the state agencies, the federal agencies, consumer protection groups, accrediting agencies, students and others all concerned not only with state authorization but with all aspects of assurance of minimum standards, quality and adequate information for students.

At about the same time the Federal Interagency Committee on Education (FICE) developed its own internal federal task force on consumer protection in postsecondary education. Both the ECS conferences and the FICE task force report urged further strengthening of state laws, adoption of the ECS model legislation, development of a clearinghouse for information among states on authorization and on consumer protection and continued cooperation among all the interested groups.

In the meantime, in the area of accreditation as it relates to eligibility for federal funds, a number of developments had occurred. The National Commission on Accrediting and the Federation of Regional Accrediting Commissions of Higher Education had begun discussions that

were to lead to their merger in the Council on Postsecondary Accreditation. Two reports highly critical not just of accreditation but of the entire eligibility system emerged. The first was the Newman report** that, though never formally published, was widely circulated in draft form and had considerable impact in raising critical issues. The second was the Orleans report*** published in 1974, which was followed by a U.S. Office of Education-sponsored national invitational conference on institutional eligibility in 1975.

Accrediting agencies in the meantime separately and, with the advent of the Council on Postsecondary Accreditation, together had undergone considerable evolution and had become more aware of their public as well as institutional responsibilities. They had identified as their major concern not just assurance of minimal quality but institutional qualitative improvement. At the national conference on institutional eligibility, however, it became evident that the nature and extent of the state role in authorization and licensure was not as clearly understood as it ought to be. It was at that time that first discussions about the need for an in-depth study of state oversight operations took place.

It was during this period that Richard Fulton, then executive secretary and general counsel of the Association of Independent Colleges and Schools, coined the phrase "the triad" for interrelations among the federal government, the accrediting agencies and the states as they separately and together are involved in determination of institutional eligibility. While representatives of the triad had taken part in the ECS model legislation, in the consumer protection conferences and in the national conference on institutional eligibility, it now became an explicit concern to explore their interrelations more fully and to develop continuing communication and working relations. A conference in January 1976, sponsored again by the Postsecondary Education Convening Authority, was devoted specifically to such exploration.

* See Steven M. Jung, et al., *A Study of State Oversight in Postsecondary Education, Final Technical Report* (Palo Alto, Calif.: American Institutes for Research, December 30, 1977).

** Newman, Frank, *Unpublished manuscript for the U.S. Office of Education.*

*** Orleans, Harold, et al, *Private Accreditation and Public Eligibility.* (Washington, D.C.: Brookings Institution and National Academy of Public Administration Foundation, October 1974).

This leads us to mid-1976 and Keystone, a seminar specifically designed for state approval agencies to accomplish three things: (1) to establish lines of communication among state authorizing officials, some of them new in their positions and their responsibilities; (2) to provide a working session including the operational aspects of state authorization; and (3) to deal with policy issues on the state level as these related to the other members of the triad. It was the hope of the planners and participants that the Keystone experience could be repeated if not annually at least biennially.

One other series of developments must be added. I have already mentioned the impact of the Newman and the Orleans reports. Two other studies call for brief mention and a third is critical to this meeting. The first two studies deal more specifically with consumer protection. One of these, Better Information for Student Choice: National Project I, was funded by the Fund for the Improvement of Postsecondary Education and involved 11 institutions and 4 national agencies. The project was coordinated by the Education Commission of the States. Its primary focus was on better information for students and was aimed at ways in which institutions could improve communications with students. The second was a study, funded by the U.S. Office of Education (USOE), by the American Institutes for Research on improving the consumer protection function in postsecondary education. This second study had its roots in the Federal Interagency Committee on Education task force. It not only identified major abuses but developed a checklist of key consumer protection issues. This served as important background and point of reference for the third and crucial study.

This third study in part grew out of the discussions after the USOE's national invitational conference plus a number of other developments noted. The report, funded by USOE, is the *Study of State Oversight in Postsecondary Education* by the American Institutes for Research (AIR) under the direction of Steven Jung. This study for the first time gives a comprehensive picture of state licensure and authorization of institutions to operate; of the laws, regulations and operations of state agencies; and makes a series of significant recommendations on how licensure and authorization can be improved. A consideration of this report is one of the basic functions of this conference.

While the AIR report was in process, the federal General Accounting Office (GAO) was undertaking its own investigation of the assur-

ances provided by the U.S. Office of Education's eligibility process. Although the GAO report has not been officially released, drafts have been circulated to USOE and key persons in the accrediting process. Regardless of the report's methodology or the accuracy of its information, it does suggest that the assurances need shoring.

Among its recommendations directly relevant to this meeting and reinforcing recommendations of the AIR report are the following: (1) that representatives of the Department of Health, Education and Welfare continue to meet with the states and accrediting associations to develop together definitions of their respective roles and to establish a reasonable timeframe for defining and implementing them; (2) that the Department of Health, Education and Welfare take steps to upgrade the state authorization process; and, (3) that the Department of Health, Education and Welfare conduct a study of what information should be shared by the parties in the eligibility process and establish a formal information-sharing system among these parties. The report argues that because the states possess the legal authority to permit or deny a school the right to operate within their borders, they currently represent the most effective means to insure that students are protected in their relations with schools.

In fall 1977, at a special invitational seminar for representatives of the triad plus selected persons from the wider educational community held in West Palm Beach, Florida, the immediate need for follow up to Keystone became evident. The message from the conference was clear. Tensions were developing among the members of the triad, due to the increasing competition for students in the postsecondary educational community, due to growing federal concern with increasing default rates and instances of fraud and abuse in marginal institutions and due to state concern with postsecondary educational accountability. Further, the key to effective control rests with the states exercising their regulatory functions, not in place of accreditation or federal operations but as a strong foundation on which accreditation and federal concern for eligibility can build.

Shortly after the 1977 meeting, the planning committee for this conference was set up with representatives from state agencies approving nondegree and proprietary institutions, state agencies approving nonprofit degree-granting institutions, the accrediting community, the U.S. Office of Education, the State Higher Edu-

cation Executive Officers and the American Institutes for Research. The minutes of the planning meeting and program outline were sent to all participants of the Florida conference for comment and suggestion. While this seminar is sponsored and funded by the Education Commission of the States and the Office of Education, other groups cooperated in it, as noted by Governor Bowen in his address.

And that, with some gaps, brings us to Colorado Springs. Again, the focus of this seminar is not on the federal government primarily nor on accreditation but on the states and their authorizing and oversight functions. It involves the federal government and accreditation from two standpoints. First, state action is the precondition of accreditation or federal action in relation to eligibility, for an institution must exist either to be accredited or to be eligible for federal funds, and to exist it must be incorporated, authorized to operate or licensed by a state. Second, to the extent that authorization is a continuing process including monitoring to insure that institutions continue to meet at least minimum conditions of fiscal and educational integrity, it is the foundation on which further assessments of quality and eligibility for federal as well as other types of programs rest. As such it is of vital interest to other members of the triad who may also help reinforce and inform action on the state level.

The objectives of this seminar are, it seems to me, rather clear. They grow out of the past history. Particularly important in this is the AIR report, which for the first time brings together comprehensive information on what the states are or are not doing about oversight (as of January 1977), including their laws, regulations and operations, and which makes significant recommendations for the future.

Clearly, one objective is to review the AIR report not as another historical document to be noted and shelved but as a working basis for further developments. We need to assess its strengths and weaknesses, but particularly its implications and recommendations for improving state oversight activity to better serve the needs of the citizens of the states and nation. A second equally important objective, as in Keystone, is to provide working sessions in which the issues, operational concerns, roadblocks and opportunities facing authorizing agencies in carrying out their functions can be shared and dealt with. The questions and discussion guides for the small workshop sessions, in addition to the material from the report, should help focus and highlight these discussions.

The third objective, related to the first two, is to look more critically at the relations of state oversight operations to accreditation and to the federal government, including ways in which accreditation and federal activities can reinforce and inform state oversight activities and vice versa. To what extent and what kind of technical assistance and support should or should not the federal government, and particularly the Division of Eligibility and Agency Evaluation of the USOE, make available to the states? In what ways can or cannot states and accrediting agencies complement each other or work together in dealing with such issues as the problem of off-campus and out-of-state institutional operations? How can more effective communication and understanding among state agencies — and of state agencies with accrediting agencies and the federal government — be established?

The fourth objective is to review the adequacy of present laws and regulations and to consider more specifically the kinds of factors that should be incorporated in regulations to carry out the intent of the laws. The fifth objective is to develop appropriate recommendations to the states, accrediting agencies and the federal government on future directions and actions to help enhance more adequate state oversight activities, not simply or primarily for the sake of enhancing agencies, but to serve the best interests of the people of the states and the nation.

These objectives constitute a large but critical order. The work of this seminar will be intense and hopefully lively. Not all of the issues can be explored thoroughly and not all the problems will be solved. But it would be difficult to overestimate the importance of the discussions. The seminar is a unique event in which things will happen. But far more important than this seminar as a meeting is the fact that it can constitute a new beginning. What does or does not happen here will inevitably set the stage for further developments. If for some reason we are unwilling or unable to work our way through the issues, confidence in state initiatives and the ability of state agencies effectively to protect both student consumers and legitimate academic operations will not be increased and other, perhaps federal, alternatives are likely to be explored. If the solid work of this meeting indicates progress and commitment, everyone, including students, the public, lenders and institutions, will benefit and the possibility of an effective state and interstate oversight network will be enhanced.

We are facing a period, as you are all too well aware of, of increased competition for students, of changing student clienteles, of demands for increased accountability and of changing state and national priorities. All of these and other factors will highlight the oversight role of the

states in licensing and authorizing institutions to operate. From this standpoint, while the road leading to Colorado Springs is important, what happens here is even more important, and most important is what happens beyond Colorado Springs as a result.

A REVIEW OF THE STUDY OF STATE OVERSIGHT IN POSTSECONDARY EDUCATION *

Steven M. Jung
Senior Research Scientist
American Institutes for Research

Two years ago, I stood before many of you at the Keystone, Colorado, conference for state licensing and approval officials, when John Proffitt and Bill Green of the U.S. Office of Education (USOE) announced that the American Institutes for Research (AIR) staff had been awarded a contract to perform a study of the status of state authorization and oversight of postsecondary schools. The reception was uniformly chilly and about evenly divided between those who felt that they already knew everything worth knowing about state oversight and those who felt that state oversight was none of USOE's business in any case. Fortunately, this initial reception soon gave way to one of sincere interest and cooperation as it became more and more apparent that state oversight constituted the first and too often the only defense for students who were the recipients of federal assistance against educational malpractice.

In providing a brief overview of the study and its products, it would be remiss of me not to note the immediate historical antecedents of our work, including the 1973 ECS model state legislation and two national conferences sponsored by ECS in 1974 on the topic of student consumer protection. These conferences first pointed out the importance of state licensing for the so-called "tripartite" system of institutional eligibility for federal student assistance programs. The antecedents also include the 1974 USOE-sponsored study by Harold Orlans and his collaborators** that strongly brought into question the federal government's *de facto* policy of relying on private accreditation bodies to prevent student consumer abuse. They include the 1975 Airlie House conference, which brought to national attention the growing area of state licensing for private degree-granting institutions. Until then, it had been generally perceived that the licensing function was more appropriate for vocationally oriented schools, i.e., proprietary schools. Finally, the antecedents of this study include the 1975 USOE conference on institutional eligibility, at which the detrimental effects of the dearth of knowledge about state licensing were noted with increasing concern.

During the initial stages of our study, the lack of knowledge about the effectiveness of state licensing in providing consumer protection was strongly reflected in several policy discussions at the federal level: (1) the 1976-1977 Federal Trade Commission staff investigations of abuses in the proprietary school field; (2) the 1977 Department of Health, Education and Welfare (DHEW) student financial assistance study group hearings and report on reorganization of federal assistance programs under Title IV; and (3) the 1976-1977 Government Accounting Office (GAO) study of the federal eligibility systems, all of which gave state licensing the shortest possible shrift.

This brings me to the completion of our study, which might better be titled "everything you always wanted to know about state licensing but were afraid to ask". The study is based on a detailed analysis of about 95 percent of the total number of state laws and regulations passed before January 1, 1977, that dealt with institutional licensing and approval. In connection with this analysis, over 900 pages of common format abstracts were prepared. These are currently being made available through the ERIC system. In addition, the study is based on over 150 hours of telephone interviews with officials in all 50 states and the District of Columbia, and in-depth site interviews with over 100 officials in 20 states. These interviews gave us extensive data on the enforcement resources and needs of 184 state agencies — 82 exercising authority over private institutions and 102 with some form of governance responsibility for publicly supported institutions. We were able to collect and record over 200 critical incidents where state licensing/regulating agencies had been conspicuously successful or unsuccessful in dealing with institutional policies, practices or conditions that were considered potentially abusive to students. These

* See Appendix A for the Executive Summary of the AIR study.

** See footnote, page 7.

data are reported in the *Final Technical Report*. Included in the appendixes of the report are detailed tables that indicate the consumer protection provisions of state laws and regulations in the 14 following categories that were identified by a previous AIR study:

1. Institutional purpose, governance and operation.
2. Course length, content, goals or objectives.
3. Degree, diploma, credential or graduation requirements.
4. Qualifications of instructional or administrative staff, including maximum teaching loads and teacher-pupil ratios.
5. Facilities, including instructional and administrative facilities and equipment, housing or room/board facilities, health and safety requirements.
6. Financial stability, including institutional performance bonds and financial record maintenance.
7. Minimum qualifications of potential students and orientation of entering students.
8. Public disclosure of material facts, including fees and content of enrollment agreements or contracts.
9. Advertising or sales/recruiting practices, including minimum qualifications for licensing of sales representatives, and limitations on use of terminology such as "university," "approval," "admissions counselor," etc.
10. Student and personnel recordkeeping practices, including minimum requirements for content of students' records.
11. Student and personnel recordkeeping practices, including minimum requirements for maintenance of students' records.
12. Financial practices, including procedures for making loan awards, requirements for fees and scholarships or aid requirements.
13. Minimum refund policies and practices.
14. Placement, including follow-up data collection from former students, graduates and employers regarding posteducational outcomes.

Also included are comparative state-by-state analyses on such topics as: (1) location of the licensing function within the state bureaucracy, (2) authorized enforcement strategies, (3) dates of recent rulemaking activity, (4) treatment of out-of-state institutions and (5) comparisons with the similar provisions of the 1973 ECS model state legislation. Finally, extensive data are provided on state officials' perceptions of their own needs for strengthening the oversight of institutions under their jurisdiction. Obviously,

these results are much too extensive for me to report here. I urge you to read the *Executive Summary* (see Appendix A) to get a basic overview and then use the table of contents in the *Final Report* to examine the results on topics about which you are particularly interested.

However, some major findings of the study bear repeating. For example, only 38 states have legal provisions for authorization and oversight of private degree-granting institutions, and, of these, fully three-quarters contain provisions that make most established institutions exempt from the consumer protection standards of the laws and regulations. This is true despite the well-documented and well-publicized DHEW projections that nonpublic traditional degree-granting institutions are facing "ominous" prospects in the immediate future, with declining enrollments, declining financial stability and increasing competition with public-supported institutions and nontraditional institutions offering degree programs costing considerably less money to operate. In the nonpublic occupational school sector, 48 states have licensing provisions. Here I have previously characterized the common situation as one of not enough staff or money, not enough legal expertise, not enough support from state law enforcement agencies and not enough visibility for the important job being done. Yet these agencies represent virtually the only real authority in some states for forcing unethical, unscrupulous or incompetent schools from the educational marketplace — a multibillion dollar marketplace in which existing state consumer fraud or UDAP* statutes are rarely if ever applied. Governor Bowen listed a number of things that need to be done to rectify this situation. But progress will not be easy.

Recently, someone quoted a state legislator who, while helping to vote down a proposed state licensing bill for degree-granting institutions, said, "Hell, no one ever died from a poor education and, besides, licensing costs money!" Given the political climate in most states, that legislator's position is an entirely rational one and probably more reflective of the future than any of us care to admit. The trend, as I see it, is away from more public support for state regulatory intervention in the name of consumer protection, away from the provision of more public funds for any purposes of intervention in the free marketplace and away from serious concern for the individual student who, through

* Unfair or deceptive acts or practices

ignorance, is subjected to educational malpractice.

Given that situation, of what good is this study that we have worked two years to complete? I hope you will come up with some answers to this question during this unique workshop. But I would like to offer some personal suggestions.

First, of course, there are a number of ways the federal government could help, including those that have been listed in the *Final Report* and in the *Executive Summary*, such as the establishment of a USOE state liaison center and clearinghouse, the provision of technical assistance, the provision of grants for specific developmental purposes and the funding of workshops such as this one. At the state level, it may be possible to influence legislators to add more effective provisions or substitute conditional exemptions for blanket exemptions by pointing out some of the provisions other states have enacted. We have attempted to facilitate this use by preparing two additional documents — a set of consumer protection principles for state regulations promulgated under the ECS model legislation and actual listings of the segments of various state laws and regulations that were rated as more extensive than the provisions of the model legislation.

The importance of good public relations cannot be underestimated. It is clear that effective oversight of schools will never make headline news. Paradoxically, it seems that only abuses make news. However, incidents that have occurred elsewhere (i.e., in other states) have been used effectively in some states to show "what could happen here." The following represent some other specific suggestions for licensing agencies:

1. Prepare routine annual reports to the legislature and to the general public detailing the number and topics of student complaints received, the nature of abuses discovered by routine authorization oversight visits, the consequent agency actions and the outcomes, especially in terms of potential abuses prevented. In this connection, the development of a standard complaint handling mechanism, to record, categorize and follow up on student complaints, is essential.

2. Issue special reports and press releases, detailing especially noteworthy abuses or actions taken against institutions, including detailed explanations of

the practices or conditions that were uncovered and the corrective steps that were taken.

3. Arrange publication and wide distribution within the state of pamphlets and/or handbooks that tell students and parents about how to shop for an education, be more effective consumers and complain effectively if they encounter abuses. Publish a standard student complaint form with instructions on where to send it.

4. Participate, with state vocational guidance organizations, in comprehensive programs to make potential students in the state more aware of available options and their rights and responsibilities in choosing an education. One example is providing a statewide hotline number or a computerized information sharing and retrieval system with connections to all high schools in the state.

Above all, agencies should seek to point out the cost benefits to the state of maintaining a careful limited program of institutional monitoring and follow up. Every student who successfully completes a sound educational program is more likely to become a taxpayer, rather than a tax user. Moreover, many state institutional licensing programs take advantage of licensing fees and subsidies provided by the Veterans Administration for performing course approvals for veterans to provide the bulk of their financial support.

This conference marks the end of my own involvement in the area of state oversight and student consumer protection. I will be moving on to an assignment in a completely different area of educational research. A lack of permanent attachment to a sponsor can provide a necessary measure of objectivity to a contracted study such as this. Unfortunately, it is also a drawback because it means we can rarely be around to see if there will be any follow up to our recommendations. It is somewhat unusual and very gratifying to me to have this much contact with the actual follow up by a research sponsor. It is my hope that in a few years we might again have an opportunity to conduct a study of the status of state oversight in post-secondary education, finding substantial improvements that can be traced to the data and recommendations of this study. In retrospect, it has been a great pleasure.

REACTIONS TO THE AMERICAN INSTITUTES FOR RESEARCH STUDY

I. A State Perspective

T. Edward Hollander

Chancellor, New Jersey Department of Higher Education

The "Palo Alto Four"* have done a magnificent job in sorting out and drawing meaningful conclusions from hundreds of pages of licensing laws. The document they issued is surprisingly readable and interesting, given the subject matter, which the U.S. Supreme Court would find to be completely "of redeeming social value."

In their conclusion, the authors cite a "tripartite" eligibility system involving state authorization, U.S. Office of Education (USOE) eligibility and voluntary accreditation as the soundest approach to consumer protection and the furthering of federal concerns for consumer protection in education. In fact, their findings encourage the view that the state is the most promising level of government for insuring adequate policing of postsecondary institutions, both for consumer protection and to safeguard the federal interest. I heartily agree that state authority and responsibility need to be extended if the state is to be the major focus for licensure and accreditation but that differences should be recognized between the proprietary and nonprofit sectors.

Postsecondary education continues as a state function. States are the principal source of institutional funding and constitute the level of government most responsible for coordination and governance. Thus they are in the unique position of influencing the panoply of institutional activities in relation to public policy objectives. The authors, out of necessity, have limited their study to the various areas of legal oversight and their findings in this area are particularly illuminating. Nevertheless, we would do well to bear in mind that a state's usefulness as overseer results less from its policing powers than from its broader public policy powers.

State licensure activities usually are not limited to issues of consumer protection but extend as well to assessment of need, to avoidance of program duplication and to other activities that are associated with planning and coordination functions. The states' policies and programs with respect to tuition, tuition aid and institutional support levels have the greatest impact

on the well-being of private and public institutions. Compared to these broader questions of state resource allocation, licensure and program approval functions are trivial in their impact. Even so, they are not so trivial as to warrant our neglect, but their significance should be considered within the broader context of public policy.

For example, one of several examples of a well-articulated state-federal partnership exists in New Jersey where student aid is a shared effort with the state playing the roles of senior partner, financier and administrator of the system. The state's interests in minimizing abuse is paramount and federal reliance upon state surveillance will not go unrewarded. Similarly, in its loan efforts, New Jersey has a collection record that is unmatched elsewhere, because the state's self-interest lies in a responsible program that collects outstanding federal loan dollars. But what makes New Jersey a suitable partner in enforcement arrangements that both benefit students and make USOE look good is that broad public policy for all higher education extending over financial policy, budget allocations, student aid administration and program approval is within the province of a single department. All of these efforts are part of an interrelated whole. The purview, unfortunately, is limited to higher education and does not extend to nondegree-granting postsecondary institutions that fall under the authority of an older and better nourished sister agency.

A further and final argument for reliance upon the state is the wide variation among institutional configurations in the various states. Massachusetts and its heavy reliance upon private degree-granting institutions is vastly different from Alaska with its single private college. New Jersey with its continued reliance upon the rest of the country for higher education contrasts with the almost wholly self-sufficient California system. State differences in higher education are not idiosyncratic, but rather they reflect different traditions, histories, economies and student needs. Federal efforts to accommodate such variations,

* i.e., the four authors of the AIR report.

through federal statutes, rules and regulations, are likely to open more doors for abuse than state procedures could close. Federal efforts also are less likely to be effective.

So I offer as my first point — a self-serving one considering my position — that the usefulness of the state in its oversight role requires a more generous federal recognition of the state role in higher education. A decade ago, when the federal government began to aid local school districts on a significant level, it was concerned about the relative ineffectiveness of the state agencies for elementary and secondary education. It then adopted a financing policy designed to strengthen the state agencies, an effort that has been reasonably successful. The programs funded through the Education Amendments of 1978 rely heavily upon state agency policy making, surveillance and monitoring.

By contrast, the federal government maintains a direct relationship to institutions of higher education, avoiding, whenever possible, reliance upon the state agency. Such a policy has resulted in serious problems in student aid administration, administration of loan programs and the development of coordinated state policies. The federal government, facing as it does statewide postsecondary agencies that in some states are weak and fragmented, must choose between supporting and strengthening them or attempting its own enforcement arrangements. The latter course, in my view, if implemented, is likely to be ineffective, threatening to institutional autonomy, hopelessly bureaucratic and counterproductive. It could even lead to a weakening of state support for postsecondary education.

The nature and extent of the federal-state partnership is likely to be decided in the drafting of the Higher Education Amendments of 1980 and the way in which the proposed Department of Education, if and when it emerges, is structured. So it is that I applaud a major recommendation of the study that the federal government finance, in partnership with the states, strengthened state oversight in postsecondary education. The "feds" should do so, however, a broadened context that extends state efforts in planning, coordination, policy making and student aid and loan administration, drawing upon the federal experience at the elementary and secondary levels. I also applaud the recommendation that it do so only for states willing to establish effective statutory authority for oversight. The Education Commission of the States model legislation should be regarded

as an adequate and desirable model for state oversight activities. All of the remaining recommendations are laudable, though not very useful unless the financing and the financial incentive proposal are implemented.

The study points out the significant differences in the source of complaints among students who attend proprietary (profit-making) and other institutions. These differences are critical to the nature of the statutory authority required and the enforcement procedures that may be appropriate. Students attending proprietary institutions are concerned about abuses that are common among commercial enterprises that sell products at the retail level, namely, pricing, refund policy, truth-in-advertising, adequacy of facilities, financial responsibility and so forth. Oversight of proprietary postsecondary institutions is needed to prevent "rip-offs" of the student, though the prevention of exploitation of federal and state aid programs may be a necessary, though secondary, objective.

Students seeking to attend degree-granting and even nondegree-granting public and non-profit private institutions require a more sophisticated level of protection. Such students generally seek access to such institutions; they are more reluctant to withdraw, once admitted; their major resource commitment is time, earnings and other opportunities foregone rather than outlay costs, and their length of study is longer and hence the consequences of a bad decision are much greater than in the case of proprietary institutions.

While it may be that students attending degree-granting institutions require traditional consumer protection in some circumstances, I would argue that colleges and universities have built-in safeguards against the more obvious kinds of consumer abuse. First, there is no single proprietor or small group of stockholders who stand to gain or lose significantly from changes in the level of profits. Secondly, and more importantly, the decision-making process in a higher institution is diverse and involves a variety of interests including trustees, faculty members, organized student groups, alumni and the state. The obvious and typical consumer abuses are likely to cause indignation within the academy; they certainly would be recognized as "bad form." Thirdly, the students who attend private colleges and other nonprofit degree-granting institutions tend to be reasonably sophisticated consumers, though there are important exceptions among students who attend nondegree-granting postsecondary in-

stitutions or degree-granting institutions that tend to serve first generation college students.

Higher institutions are less likely to abuse the students in the traditional ways identified in the study, but they act in their own self-interest when survival is at stake or even to accomplish institutional goals that require sustained growth in enrollments and sustained or expanded financing. Several examples come to mind:

1. The encouragement of enrollments in programs of study for which job market opportunities are limited. The incentives for recruitment are financing for the institution and employment and promotion levels for the faculty.

2. The recruitment of students through the use of degree program options that sound romantic, but offer few opportunities for application, such as the master's degree in clinical psychology in states where the doctorate is required for practice.

3. The offering of programs of study that are shoddy because the potential student enrollment is insufficient to justify adequate facilities and faculty.

4. The overaward of credit in relation to available instruction in order to attract students (easy degree) or to qualify students for full-time status (for student aid) work when only part-time study is provided.

5. The recognition of life experience or credit by examination that is unwarranted in relation to actual accomplishments in order to recruit or retain students.

6. The reduction of standards of performance in order to retain tuition-paying students who should have been counselled into some other area of study.

7. The admission of students who are unprepared for college (and who are likely to drop out) without providing adequate counseling or remedial programs that could offer such students a reasonable chance for success.

8. The award of credits for noncollegiate preparatory work in order to attract such students and provide the full measure of tuition (or state aid).

9. The failure to provide adequate information to students and prospective students concerning availability of student housing, career opportunities in specialized areas of study, acceptability of transfer credits, an achievement profile of the freshman class, staffing and class size and counseling and related activities.

10. The award of unfunded student aid to attract high achievement students to their freshman year, but the failure to continue such aid in subsequent years.

11. The continuation of inadequate and below standard programs (at the graduate level) that credential students but do not offer them realistic probabilities for subsequent employment.

12. Inequitable or biased admissions procedures.

13. Use of accreditation and licensure authority at a home campus to franchise branch campus operations or other institutions to offer degree-credit work that they cannot offer under their own authority.

The point is that the nature of the oversight required for degree-granting institutions requires a higher order of judgment and the identification of possible abuses that are difficult to establish. In some cases the institution itself may be unaware that its actions have done harm to the student or exploited, improperly, federal or state financing arrangements. The nature of state oversight pertinent to the degree-granting sector is threatening. It borders on state intrusion into the academic activities of the institution. The boundary that separates academic freedom from academic accountability is neither well marked nor well defined.

So it is that I argue that state oversight for degree-granting institutions should be in the hands of an agency of state government that itself is reasonably separated from the everyday political decision-making process of state government. I argue too that federal financing, and the terms under which it is made available in tandem with state resources, should be sensitive to the academic checks and balances peculiar to the degree-granting institutions, as well as the high degree of judgment necessary to insure institutional accountability in the degree-granting sector. What are the pertinent elements of accountability?

1. The state board or commission that exercises such power should have all of the attributes usually delegated to a board of trustees with governance power over a degree-granting institution. Academic accountability should not be vested in appointed officials, the budget office nor the staff of the legislature.

2. The scope of oversight should extend to all institutions with degree-granting powers. No exemptions should exist through statute.

3. Academic oversight should be exercised

by a staff holding academic credentials and meeting academic requirements consistent with those required for academic administrators within the institution.

4. Academic oversight should be exercised through the following processes:

a. Full and fair disclosure to students and to the public about the institution's academic strengths and weaknesses, including but not limited to information about who is admitted, standards for grading and retention, including rates, what is taught and by whom, sufficiency of staff and faculties, description of pertinent instructional strategies and other information that would provide students with a reasonable basis for assessment of academic sufficiency and pertinence of the institution to student needs.

b. Full and fair disclosure to students and the public concerning "consumer practices," including admissions policies and procedures, tuition practices, available student aid, refund policy, degree requirements, housing and student services available and other pertinent information.

c. A system for program registration and assessment of the academic quality of the programs of study offered by degree-granting institutions by one or the other of the following methods, with the method chosen depending upon the academic tradition within the state:

(1) Reliance upon specialized accrediting agencies or regional accrediting agencies that include program-by-program assessment within their purview, if there is proper follow up to insure that recommendations are implemented.

(2) A process of self assessment by such institution of its own academic programs on at least a five-year cycle, using a system of outside visitors reporting to the board through the president, with sufficient public disclosure of the results of the process to insure that recommendations are implemented.

(3) A system of outside evaluation and registration of program under state agency auspices.

5. Special attention is warranted for such nontraditional programs as branch campus and off-campus operations, experiential learning, new program proposals and external degree arrangements.

6. The establishment, by the state, of a state

information system for postsecondary education that provides objective and pertinent information about postsecondary opportunities is highly desirable.

While it may be that more staff is needed, especially in enforcement areas, the most effective state efforts in the degree-granting sector are likely to result if state activity is limited to defining standards and encouraging the establishment of self-policing arrangements within the higher education community. Direct state intervention should be the exception rather than the general practice. While state agencies should exercise their powers with restraint and sensitivity, they can be effective only if they have the power to act when action is the appropriate remedy.

I wish I could argue that voluntary accreditation is sufficient. Unfortunately it is not and for the following reasons:

1. Accreditation relates to the total institution. There are examples of relatively small institutions enjoying accreditation that undertook major off-campus or specialized programs enrolling three and four times their regular enrollments, growing essentially on the basis of revenues from state and federal tuition aid programs. Or often adequate undergraduate institutions undertake graduate missions that are weak and limited. Individual quality programs in addition to overall institutional capability are warranted.

2. Institutions accredited on a basic campus franchise or offer branch campus operations that are not monitored. The voluntary accrediting associations are now beginning to monitor branch campus operations.

3. Visiting accreditation teams may talk tough in informal conversations, but they issue the blandest kinds of reports, certainly not the kind of report on which a state can act.

4. The interval between accreditation visits is too long a period to countenance abuse. State agencies may identify abuses more rapidly and establish special visits to settle such questions.

Yet, I would argue that state agencies should rely heavily upon voluntary accreditation, if only to establish minimum standards, but the nature and extent of the reliance should be at the discretion of the state agency.

Finally, I should like to raise some concerns about potential and actual abuses by state licensing agencies, especially those whose major area of activity are in the field of higher

education. The state agency is under the following pressures:

1. Liberal administration of existing statutes, rules and regulations when applied to domestic institutions, especially degree-granting institutions under nongovernmental sponsorship.

2. Strict interpretation and administration of existing statutes, rules and regulations when applied to foreign institutions.

3. Liberal interpretation of student aid policies for resident students attending domestic institutions.

4. Limitations on student aid for resident students attending out-of-state institutions.

If compliant with these pressures, states are inviting a U.S. Supreme Court test of the "commerce" clause as regards higher education.

In a previous existence I worked in New York, a state concerned with maintaining maximum enrollments. State student aid could not be used outside of the state or at foreign institutions operating branch campuses within the state. Foreign institutions can operate in the state only if a New York institution is unable to meet the need.

My present employer, the generous and public spirited state of New Jersey, has established a more open policy. Student aid is "portable" on

a reciprocal basis (only six other states are able to reciprocate). New Jersey does permit an out-of-state institution that meets New Jersey standards to operate within the state if the incoming institution meets a demonstrated need within the state. Need is established if a school system, a commercial corporation or other agency concludes that a relationship with the out-of-state institution is most appropriate in relation to the needs after review of the alternative arrangements that could be made with a New Jersey institution. By way of contrast, need in New York is established only if there is no New York institution available and willing to undertake the program, not a likely possibility at this time. If the New York definition becomes widely accepted, interstate institutional mobility will be impossible.

Although off-campus and branch campus operations raise academic questions, these can be resolved through appropriate licensure standards. Absolute interstate barriers to branch campus operations are an undesirable outcome, especially if it is paraded under the banner of academic standards.

In summary, the authors of the AIR study are right on target both in their findings and recommendations. Support for their recommendations is warranted.

II. A National/Federal Perspective

John D. Phillips

President, National Association of Independent Colleges and Universities

In one of my previous conditions of servitude, as Deputy U.S. Commissioner of Education, I had the great pleasure of working for John Proffitt and his Division of Eligibility and Agency Evaluation. That is to say, I was John Proffitt's supervisor. I would describe this relationship as roughly akin to that between Billy Martin and Reggie Jackson. That is, I was in constant peril of being fired by the owner of the U.S. Office of Education (USOE) ball club (Martin Kramer), depending largely on the performance of my heavy-hitting but temperamental star ballplayer (John Proffitt) — who, in turn, faced considerable trouble getting his game together because of constant meddling and interference from the front office.

It was just about three years ago — while

this uneasy relationship between Kramer, Phillips and Proffitt was being artfully worked out — that the rhetorical battle cry of "fraud and abuse" began to reverberate through the halls of Congress and the Department of Health, Education and Welfare (DHEW), following the sensationalized disclosures in the cases of advance schools and the West Coast trade schools. Indeed, I cannot yet escape the memory of our first full-scale meeting on fraud and abuse in my office on a typically overheated summer day in 1975. In retrospect I see clearly that the meeting marked the beginning of the end for those easy, informal and essentially trusting protocols among federal, state and voluntary accrediting agencies that had predominated throughout the 16-year development of federal

student aid programs — from a tidy \$3-million National Defense Student Loan Program appropriation in 1959 to an enormous multifaceted \$3-billion appropriation in 1975.

The tight-lipped investigator from the Department of Justice had required me to sign personally for the sealed brown envelope marked "administrative-confidential." I already had read through the litany of miscreance while he waited impatiently and perspiringly across the room. I already had been told in no uncertain terms that it was my responsibility as Deputy Commissioner to act immediately and forthrightly to halt this "fraud and abuse." And finally, of course, I already had been advised in equally certain terms by the DHEW Office of General Counsel that I had absolutely no authority under the law, not to mention any administrative capacities, to carry out the instructions from the Department of Justice.

It was in this context that the first meeting of owner, manager and star ballplayer on the subject of fraud and abuse took place in my office on that hot summer day in 1975. It was clear to all three parties — and our various agents and seconds arrayed around the table — that we would be up against an enormous set of administrative tasks over an extended time period just to redirect our bureaucratic apparatus from the primary business of helping needy students to the primary business of tracking down and prosecuting (I did not say persecuting) the perpetrators of fraud and abuse. But that could wait, as what we needed to concentrate on first was the lack of legislative authority to guide the bureaucratic apparatus, and the question was: "What authorities should we seek in the Higher Education Amendments of 1976 to bring the problem under effective control?"

I see now that the discussion of that question, which extended over many more meetings on many more steamy afternoons, was essentially a discussion by proxy of the entire system of triad relationships that had grown up around the administration of federal higher education programs since 1958. The owner had previously stated his views on the matter in the Newman report. He plumped furiously for a major expansion of direct federal powers to review, to recognize, to license and even in some cases to directly accredit postsecondary institutions seeking to secure or maintain eligibility for themselves and their students to participate in federal programs.

The manager, a classical Republican type who hailed from a civilized state and had been heavily influenced by his personal involvement

with the Education Commission of the States (ECS) in the establishment of the 1202 state commissions, argued forcefully for expanding the powers, authorities and capacities of the states and for providing federal financial incentives to link together the state coordinating commissions, the state student aid agencies and the state educational licensing agencies in a coordinated system to deal with fraud and abuse. And the star ballplayer, having spent years becoming seasoned in the tradition of exerting governmental influence discreetly and indirectly through recognition of voluntary self-governing bodies that, in turn, required compliance with generally accepted community standards, argued persuasively for expanding the powers, authorities and capacities of the accrediting agencies to review and certify the integrity or "probity" of institutional administrative and financial practices as part of their regular accreditation review processes.

Now it is true that both the owner and the manager succeeded in so thoroughly discrediting each others' arguments that they created a readily available opportunity for the star ballplayer to prevail. But, for the benefit of any who thus far have missed the opportunity to contend with John Proffitt in a policy dispute, I should point out that his lifetime batting average in such matters is pretty good for an old Kentucky country hardball player, and much better than Reggie Jackson's.

On the other hand, as so often happens to good bureaucratic ballplayers, they win all the battles and still lose the wars. The owner and manager eventually agreed to make common cause with the star ballplayer, carefully constructing a coalition of various interests within the postsecondary education community to advance and support amendments of the Higher Education Act to strengthen the capacity of accrediting bodies to control fraud and abuse by simply requiring these agencies to review and certify the integrity of institutional administrative and financial practices instead of empowering the federal or state governments to do so.

What began as an honest effort to encourage self regulation as an alternative to government regulation soon dissolved into "The Great Probity Debate," in which the members of the accrediting establishment looked squarely into the mouth of this gift horse, decided that they did not much like its federal breeding and bloodlines and set out to defeat the bill. The postsecondary community was thus sufficiently divided to give members of Congress a plausible excuse to do nothing about the problem in the

1976 amendments, which is precisely what they did.

The scene now shifts to the air-conditioned office of the Undersecretary of DHEW on a day in the summer of 1976 — shortly after it had become inescapably clear that Congress would not consider the Administration's proposal to rely primarily on the voluntary accrediting agencies to deal with the problem. The tight-lipped men from the Department of Justice were there, demanding to know what we were going to do now that the path of legislation to rely upon voluntary self regulation had been blocked. The equally tight-lipped men from the new and rapidly expanding DHEW Office of Investigations were also there and they wanted to know just what we were going to do about the problem. The men from the DHEW Controller's Office and from the Office of Management and Budget were also there, and they too wanted to know what we were going to do to reassure the Congress that they could go ahead and appropriate \$3 billion to sustain the student aid programs for another year without having the programs victimized by fraud and abuse.

After some preliminary commentary about the stupidity of the USOE ball club for having tried to work out a solution in collaboration with those reactionary accrediting people, and some countervailing commentary about the unseemliness of a Republican Administration totally reversing its field and advocating expanded federal controls, the process of elimination was quickly completed. The idea of relying primarily on the state governments to solve the problem suddenly gripped everyone in the room with the tenacity of some mystical "Great Discovery."

The rest of the story is recent history with which we are all quite familiar. John Proffitt and I attended the Keystone conference with state licensing and regulating officials, positively exuding enthusiasm and confidence about the prospects for a state-federal partnership to protect the consumers of postsecondary education services against institutional fraud and abuse, thereby filling the vacuum created by the unwillingness of the accreditors to accept responsibility for prosecuting the predators. Then we returned to Washington to prepare and issue the RFP (request for proposal), which

eventually produced the American Institutes for Research (AIR) report setting forth a plausible justification for an enormous expansion of state controls on postsecondary education in the name of consumer protection, and an equally plausible justification for federal matching grants to support that effort.

I recount all of this history not to lay the dead hand of a former federal official on the collective shoulders of those participating in this seminar, but rather in an effort to put this discussion of the AIR report into a proper perspective. From that perspective, it strikes me that we are in grave danger of pushing blindly ahead with a course of action accidentally hit upon two years ago to solve a problem that fell upon us three years ago, without sufficient pause to consider the possibility that we, like the perennial French generals and the orthodox American economists, may be preparing ourselves to fight the last war or cope with the last economic crisis rather than dealing effectively with the next one.

It seems to me that the next war will not be over how much more government control we must have to deal effectively with such issues as consumer protection or fraud and abuse, but rather how much less government control we can achieve to deal effectively with the much more fundamental issues of persistent inflation, the basic freedom of our business and financial institutions to produce, the basic integrity of our educational institutions and study programs, and the basic rights of individuals to lead a full and rich life unfettered by runaway government controls imposed in the name of protecting them.

If you agree with me that we are facing a massive readjustment in the balance of power between government and other institutions of American life, then the AIR report must be seen not as charting a positive course but rather as a pretext for further extensions and refinements of government powers that must at least be resisted, if not reversed. It is more critical today than ever before that we fully and fairly explore the possibilities for voluntary self regulation — preferably through expansion of accreditation processes, but otherwise if necessary — rather than erecting yet another collection of government controls and another self-perpetuating bureaucracy to administer them.

III. An Accreditation Perspective

William K. Selden
Consultant

As I read the final technical report of *A Study of State Oversight in Postsecondary Education*, I was impressed that the issues identified were so similar to those discussed at a conference in Washington in which I was involved nearly a quarter of a century ago. The Council of State Governments had prepared the draft of model legislation to be suggested to the states for adoption in order that they might more adequately be able to enforce oversight of postsecondary educational institutions. As now, it was then recognized that most of the states needed not only stronger laws and regulations but increased funding and personnel to perform adequately what was perceived as need for protection of the public.

More than 20 years later we are attending another conference to face the same issues and to explore ways by which we may again try to do what we have so far been unable to accomplish except in a small percentage of the states. For the past few years I have been engaged in other pursuits and have not been directly or intimately involved in the issues with which most of the participants at this conference encounter on a daily basis. In view of this fact it is best that I limit myself to a few random observations of a broad nature and present these merely to initiate discussion at this seminar.

The Issue. The issue is simple. Homo sapiens being what it is, there are always some of us who will endeavor to obtain for ourselves as much as we can in return for giving as little as possible even if it requires deception, deceit or fraud to enhance our personal gain. Fortunately this human weakness is submerged in most people. However, it is found among individuals in all endeavors, including education at the postsecondary level.

The fraudulent, the inadequate, the markedly inferior educational institutions are not a creation of recent years. They have always existed. In fact, their presence is one of the reasons for the creation of the nongovernmental accrediting agencies that undertake institutional and programmatic reviews, some of

which had their origins in the past century.

What is of immediate concern is the present dimension of the issue and the importance that postsecondary education has for the continued well-being of our society. The report to which we are addressing ourselves indicates that "over 8,300 postsecondary institutions are currently recognized as eligible for participation in the Guaranteed Student Loan Program, which is the largest of the five Office of Education (USOE)-administered programs" identified in the document. Even if the percentage of the institutions that can justifiably be accused of malpractice in advertising, recruiting, financial refunds or making false promises is small, the absolute number can be significant because of the large total of postsecondary institutions. In other words, the dimension of the issue is now greater in absolute terms than it was 25 years ago.

Furthermore, for an increasing number of occupations postsecondary education is a necessity and the functioning of our society is dependent on qualified persons filling many of these occupational positions. Consequently, education has grown increasingly important to our economy and our society in which fraudulence can be an undermining influence to our total welfare.

For these reasons, as well as for the protection of the individuals in our society, we and our government are concerned with the identification and development of the means by which we may — not necessarily totally eliminate, even though that would be ideally desirable — so reduce fraudulence in postsecondary education that society does not unduly suffer and that comparatively few individuals can be harmed. Sufficient disclosures have been made to indicate that at least in recent years with the increased funding provided at the postsecondary level by government there has been such fraudulence to recognize that our society is being excessively injured.

The Problem. The problem is not as simple as the issue. The problem is to develop an appropriate means of exercising adequate oversight

for postsecondary education so that fraudulence will be reduced and remain at a minimum and so accomplish this goal without establishing an undue burden on all educational institutions and without creating a bureaucratic structure that will be an excessive burden on either the public or private sectors of our economy. The problem exists because of our political heritage and form of government both of which have produced and continue to support innumerable benefits for mankind. However, in the identification and eradication of fraudulence in postsecondary education we do face a problem that is not easily resolved.

Because our United States Constitution indirectly delegates the responsibility for education to the several states, because the federal government has in recent years provided large funding for various aspects and elements of postsecondary education and because we have developed and relied extensively on non-governmental agencies to accredit and approve educational institutions, we have a tripartite hegemony in the oversight of educational institutions. Despite avowed disapproval by all of fraudulence in education, it has been difficult to obtain sufficient consensus among officials of federal and state governments and of educational institutions and accrediting agencies to develop and adopt legislation and provide subsequent financial support and personnel to accomplish the goal that most all of us at this seminar perceive to be needed.

Although we are not certain that it is the case, let us proceed on the assumption that the time has arrived when it will be possible to take major steps leading to eradication of much of the fraudulence that does now exist in postsecondary education. To assist in these endeavors I offer the following random observations.

Types of Institutions Requiring External Oversight. In the studies and reports that I have read, attention has been called primarily to examples of fraudulence in nondegree vocational programs offered for profit. It is possible that a higher incidence of deception and deceit may exist in this type of institution. On the other hand, I submit that without too much probing examples of misrepresentation can be found in both private and public institutions, as well as in degree-granting and nondegree-granting, in one-year, two-year and four-year colleges.

After an extended period of continually expanding enrollments in postsecondary educa-

tion we are now entering a time, probably of long duration, of an anticipated receding college population. This era will stimulate aggressive competition for students on the part of institutions of all types. Witness the current recognition of the desirability to provide education for older persons and the expansion of programs in continuing education now being so widely endorsed by most of the professions. Let us recognize that economic motives are present as philosophical reasons for such changes in attitudes are endorsed.

My purpose in mentioning these developments is to support the principle that any expansion of external oversight of postsecondary education should be similar for all education and not limited to any one type of institution. Although the extent of fraudulence may vary among types it is regrettably present in all types.

Broad Discretion Strategy v. Detailed Standards Strategy. The report that serves as the focal point of this conference identifies a century-old issue of the nongovernmental accrediting agencies. When accreditation was initiated it was necessary to provide specific definitions for a college. This the regional or institutional accrediting associations attempted to do with their detailed requirements that in large measure provided merely a check list. In a similar manner the professional or specialized agencies accomplished the same purpose by relying on detailed and specific standards as to physical facilities, hours of instruction, qualifications of faculty, laboratory procedures, library collections and so on.

As time passed and as educators, in whatever field, began to develop a consensus as to the necessary ingredients for a good educational institution or program of study, they expressed uneasiness with detailed specifications. Hundreds of thousands of manhours and of dollars have been expended in attempts to devise standards that are broad in scope and at the same time sufficiently specific to be constructively employed in the accrediting review process. At the same time that it is necessary both to permit some flexibility and variability in education, it is also necessary to have a scale of values in order that an institution or program may be evaluated as to its quality. Without the latter accreditation is meaningless.

Standards for accreditation are in flux, they always will be and they always should be. If they are not education will be stultified and dormant. In this respect I am concerned that

there may be too much support for the detailed standards strategy especially when implemented by officials of government agencies. Government requirements cannot and should not be subject to rapid change. If they are detailed and immediately specific, we run the serious risk of imposing outmoded and oppressive standards. On the other hand, if we support the approach of broad discretion by government officials in educational oversight responsibilities we will encourage conditions in which compliance in many situations will be based upon personal opinion and whim.

The answer to this dilemma must include a measure of each ingredient — broad discretion and more specific standards. The discussions at this conference could be significant in prescribing a solution, at least for the immediate future.

Tripartite Structure. In this same report on *State Oversight in Postsecondary Education*, a statement was presented to the effect that state agencies can provide closer surveillance and oversight and also react more quickly than nongovernmental accrediting agencies. I will not argue for or against this specific claim but I do call your attention to the question whether we should consider only immediate consequences or whether they should be considered within the context of possible long-term developments. I am indicating that our immediate worry about fraudulence in postsecondary education, which I totally condemn, should not absorb our entire attention to such an extent that we overlook the long-term consequences of recommendations that may emanate from these sessions.

I will expand on this approach by referring to what was identified a few years ago as the triad or tripartite relationships in accreditation among agencies of the federal government, agencies of the many states and the nongovernmental organizations. This triad relationship provides an easily identified and visualized description but from my point of view is insufficient and deceptively misleading. Let me explain.

One of the pillars of the political philosophy on which this nation has been based is the principle of balance of forces. Recognition of this principle was incorporated in the United States Constitution with the three branches of government — executive, judicial and legislative. It was also incorporated in our federal form of government with certain powers delegated to the central or federal government and

the others reserved for the many states, which in turn have powers reserved to their subdivisions whether they be counties, towns, parishes or cities. The states also have their respective three branches of government.

In addition to these balances of powers we also have the private sector in contrast to the governmental sector. The history of this nation, in fact of all nations to varying extents, record the ebb and flow of relative influence and strengths between what we now call the public sector in contrast to the private sector.

During most of the lifetimes of those present at this conference there has been a momentum toward greater strength for the public sector based largely on the assumption that government will better represent the interests of all people than will the private sector with its various entrenched and powerful segments. This movement toward greater power for government versus the private sector is also stimulated by developments in other nations where this tendency is well advanced and also by the pressures of economic, political and military competition with the more autocratic and centralized governments of Eastern Europe.

We are now witnessing the frustrations of millions of people who feel boxed by inflation, slowing economic growth, unrequited aspirations, expanding taxes and growing government intended to provide services for which the people themselves have not accepted realistic limitations. These frustrations are being manifested in a brutally blunt manner as expressed in the recent California election (i.e., Proposition 13). This election will undoubtedly stimulate a response throughout the country and should encourage us at this seminar to reflect and endeavor to resolve what for the foreseeable future should be a proper balance among the various agencies, both private and public, that are and should be concerned with external oversight of postsecondary education.

I contend that the balance of powers is not sufficiently indicated by the term triad or tripartite relationship. Under current conditions the accrediting agencies of the private sector are one element and should continue to be a vital element in the identification of quality in education. In this respect they may be identified as one side of the triad with the federal government serving as the second side and the states as the third side of the triad. On the other hand, I beseech you to review the issues assigned to this seminar in the light of the appropriate balance of powers or forces in our body politic and embody that philosophy on

which this nation was founded and which, I insist, — even with all of our aberrations in governmental operations — has been the basis for this great nation, a nation that is capable of further revision and adaption for the total welfare of its citizens.

It should be recognized that, as with the private sector, government has its entrenched

and powerful segments that strive to perpetuate themselves and their own interests. These interests are not always consonant with the broad public well-being. If we will consider the issue confronting this seminar within this broader context we will undoubtedly enjoy stimulating explorations and hopefully will reach constructive conclusions.

IV. A Federal Perspective

Alfred Moyé

Deputy Commissioner For Higher and Continuing Education
U.S. Office of Education

In his opening statement to this conference, Governor Otis Bowen struck an important theme. This conference, like those that preceded it, is part of a continuing effort by federal, state and educational institutional representatives to join in a common effort to address issues of universal concern in the postsecondary education arena. I am pleased to be here as a participant, and on behalf of the U.S. Commissioner of Education, Ernest Boyer, to extend his welcome to you and his hope that we will have a most productive and constructive conference.

As I believe you know, the U.S. Office of Education's (USOE) interest in these proceedings spring from its support of the "triad concept," which involves the federal government, state agencies and accrediting bodies in a division of responsibilities concerning USOE's eligibility system for administering student and institutional assistance programs. It was this support that lead to the issuance by the USOE of a contract with the American Institutes for Research (AIR) to provide an indepth profile of the strengths and limitations of state legal chartering and approval procedures, including specific suggestions for strategies that might be employed in order to help state agencies acquire stronger laws and enforcement mechanisms.

Due to a number of well-publicized institutional abuses of students who were recipients of federal aid programs, protection of students had become a significant problem to USOE. These abuses had been the topic of several research studies and national conferences, all of which called for efforts at strengthening the state role in authorizing and oversight of postsecondary institutions. Therefore, we believed that a study was needed to assess the degree to which

postsecondary state licensing and approving agencies provide student consumer protection by preventing or correcting abusive, and potentially abusive, institutional policies, practices and conditions.

The AIR study now is completed, and certainly it is a substantial and significant research effort. Because of its scope and because of the range of its findings and recommendation, we in the Office of Education have concluded that it was important not only to communicate its results to all state approval agencies, but also to provide a forum in which participants in the triad system could meet in order to discuss its implications. We were especially gratified when the Education Commission of the States agreed to cosponsor this conference with us and have been equally gratified by the joining of other agencies, public and private, as cooperating members. The interest of these agencies in the conference augers well for its outcome.

Clearly, one of the most important findings of the AIR study is that 48 states and the District of Columbia exercise some sort of licensing authority over private nondegree-granting institutions and that 38 states exercise specific licensing authority over traditional private nondegree-granting institutions. This data strikes at an old shibboleth regarding state oversight activity. Not only do the states have the major constitutional responsibility for governing postsecondary institutions within their boundaries, but it is clear that they have been, and continue to be, attentive to this responsibility.

Another important area of the study findings relates to state authorizing/oversight agency officials' perceptions of the U.S. Office of Educa-

tion's role. I sense a desire on the part of state agency representatives for USOE to assist in developing some kind of communication mechanism for the states in order to assist state agency officials in sharing information about schools that operate in more than one state. I also sense a desire that the office provide workshops and technical assistance, including legal experts and research studies, that will allow state agency officials to acquire new knowledge, skills and techniques for oversight. In these areas, USOE looks to this conference for guidance. For this reason, I am pleased that the conference steering committee has explicitly included among the items for discussion, the following questions:

1. How can the U.S. Office of Education assist states in discharging the state licensing of postsecondary institutions?

2. What should be the relationship of state licensing to institutional eligibility for federal funding?

These questions are not confined to the AIR study, or to the Office of Education or to the states. They are questions also on the minds of others. Recently, the General Accounting Office (GAO), in a draft report entitled "The Office of Education's Eligibility Process — What Assurances Does it Provide," recommends that the Commissioner of Education: (1) develop the capability to provide technical assistance and leadership to states to upgrade their authoriza-

tion and monitoring progress including initial authorization and monitoring capabilities, and (2) propose legislation to the Congress that would provide adequate financial support to the states to improve the state authorization process.

John Proffitt will shortly be reviewing with you the findings and recommendations of the GAO report. In the U.S. Department of Health, Education and Welfare's (DHEW) response to the two GAO recommendations I have cited, we have stated that these items will be reviewed at this conference, following which DHEW and USOE will consider the appropriate directions to take, including the need for legislation. So, I urge you to explore carefully and thoroughly those questions concerning the relationship between state licensure and institutional eligibility for federal funding, including the issue of whether or not USOE should establish recognition criteria for state licensing bodies (similar to those already in use for accrediting agencies) and should recognize, and provide assistance to, those state licensing agencies that meet the recognition criteria.

I can assure you that your collective counsel on these questions will be given the most careful consideration by DHEW and USOE. Once again, on behalf of the commissioner, I want to thank you for coming to this conference. We are delighted that you are here, and we hope that this will be a very profitable conference for all of us.

REVIEW OF THE RECOMMENDATIONS OF THE GENERAL ACCOUNTING OFFICE IN ITS DRAFT REPORT,
"THE OFFICE OF EDUCATION'S ELIGIBILITY PROCESS—WHAT ASSURANCES DOES IT PROVIDE?"
AND THE RESPONSE OF THE U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

John Proffitt
Director, Division of Eligibility and Agency Evaluation
U.S. Office of Education

Seven major recommendations contained in the General Accounting Office's (GAO) draft report on "The Office of Education's Eligibility Process—What Assurances Does it Provide?" were reviewed by Mr. Proffitt. For each recommendation, Mr. Proffitt defined the response of the U.S. Department of Health, Education and Welfare (DHEW) and the U.S. Office of Education (USOE), which response is as yet not published. The recommendations and the DHEW/USOE response are summarized below.

Recommendation 1. We recommend that the Secretary of Health, Education and Welfare direct the Commissioner of Education to continue to meet with representatives of the states and accrediting associations to jointly (a) develop definitions of their respective roles and (b) establish a reasonable time frame for defining and implementing these roles.

Response: We concur. The Commissioner of Education and the USOE staff will continue to meet with state and accrediting bodies and will organize national and regional conferences to discuss the GAO recommendations.

Recommendation 2. We recommend that the Secretary of DHEW direct the Commissioner of Education to initiate efforts that will increase the public awareness of the accreditation process and what can and should be expected from it.

Response: DHEW and USOE concur. The Office of Education is prepared to issue an eligibility statement and will then organize nationwide public hearings on the revised criteria.

Recommendation 3. The Secretary of DHEW should direct the Commissioner of Education, in order to systematically evaluate association petitions, to (a) establish minimum submission requirements, (b) identify sample self studies and visiting team reports to be submitted, (c) conduct observer visits to the

school, (d) obtain information from appropriate groups regarding schools accredited by the petitioning association, and (e) determine if association performance is of sufficient scope to meet its standards.

Response: We concur with the direction of this recommendation but not with three of the specific recommendations. USOE agrees with parts (a) and (c), but does not concur with part (b), with part (d) (because we believe current procedures are adequate), nor do we concur with part (e).

Recommendation 4. We recommend that the Secretary of DHEW direct the Commissioner of Education to forthrightly implement the provisions of the 1976 Education Amendments. Specifically, this should include the use of the limit, suspend and termination actions against schools which misrepresent the nature of their educational programs, nature of their charges or employability of graduates.

Response: DHEW and USOE concur. The final rules have already been published in the *Federal Register*.

Recommendation 5. We recommend that the Secretary of DHEW direct the Commissioner of Education to issue regulations for schools applying for eligibility for USOE financial assistance programs that provide for the following:

- a. Admission policies that enroll students with potential to benefit from training; with exceptions to be justified in writing;
- b. For universities, colleges, schools or programs preparing students for gainful employment, the provision to students of information on the number of students completing the program and seeking employment, or license or other document legally required to obtain employment in the recognized occupation;
- c. Fair and equitable refund policies under which a school must refund unearned tui-

tion and fees and room and board charges to students who do not begin or complete the period of study for which funds were paid.

Response: We concur basically with all three parts of this recommendation. With respect to part (a), current regulations would require schools to document the basis for admission, and to part (b), regulations already call for publication of such information.

Recommendation 6. We recommend that the Secretary of DHEW direct the Commissioner of Education to:

- a. Develop the capability to provide technical assistance and leadership to states to upgrade their authorization and monitoring process including initial authorization and monitoring capabilities;
- b. Propose legislation to the Congress that would provide adequate financial support to the states to improve the state authorization process;
- c. Encourage states to adopt strong authorization mechanisms including the elimination of exemptions for accredited schools from state review;
- d. Develop minimum standards for such

matters as advertising, refund policies, and information disclosure for states to use as a guide.

Response: With regard to part (a) of this recommendation we concur and the staff will be developing this further. However, we do not agree with part (b) and urge the adoption of the Education Commission of the States' model legislation. We concur with part (c) and believe that this already exists in the ECS model legislation, but we will continue to study the issue. We will reserve comment on part (d) as this recommendation has created the most discussion within DHEW, particularly with respect to the refund policy. The department is considering extending the refund policy to all student aid programs of DHEW.

Recommendation 7. We recommend that the Secretary of DHEW direct the Commissioner of Education to conduct a study of what information should be shared by the parties in the eligibility process and establish a formal information sharing system among those parties.

Response: DHEW and USOE concurs with this recommendation.

RECENT DEVELOPMENTS AT THE FEDERAL TRADE COMMISSION

Summary of the Presentations and Question and Answer Period

I. Terry S. Latanich, Attorney, Bureau of Consumer Protection, Federal Trade Commission

Mr. Latanich briefly reviewed the actions taken by the Federal Trade Commission (FTC) at its meeting held the day before the Colorado Springs seminar concerning the "Trade Regulations Rule for Vocational and Correspondence Schools". The FTC final decision was on the form of the rule and the final rule itself has not as yet been released. Mr. Latanich noted that the FTC staff feels that the rule should cover all sectors of postsecondary education — public, private profit and private nonprofit. However, the approved form includes only private profit-making vocational and trade schools. The following summarizes the issues contained in the proposed rule:

1. With regard to the prorated refund policy, Mr. Latanich noted that there is a philosophical difference between the FTC and the U.S. Office of Education concerning refund policy. The FTC is asking that contract language be used in all admission and registration documents as necessary to discourage fraud.

2. All proprietary schools that enroll over 100 students must make public their dropout rate.

3. Institutions must disclose placement rates and the FTC will require an answer to "how many of your students are employed". The FTC feels that the ECS model legislation does not adequately cover this issue.

4. Required "cooling-off" rights should be initiated by the schools' mailing to students a notice of acceptance and "disclosure information." For proprietary schools, this "cooling-off" period will be extended to 14 days.

II. Walter C. Gross III, Attorney, Bureau of Consumer Protection, Federal Trade Commission

Mr. Gross defined the areas in which the FTC will enforce the proposed "Trade Regulations Rule for Vocational and Correspondence Schools". One of the FTC's first obligations will be education of the "education industry," of students and of involved state and private ac-

crediting agencies. There will be periods during which the schools will be allowed sufficient time to bring themselves into compliance with the rule. During this period the FTC will meet to explain the rule and assist the schools. The FTC also stands ready to meet with federal and state agencies and, for students, will issue brochures, announcements and special packets.

After this grace period has elapsed, the FTC will initiate aggressive and fair enforcement that will include a fine of up to \$10,000 for each violation, together with other recourse. The FTC will determine areas where noncompliance risks are high and will set up complaint evaluation procedures. Funds have been received to establish a computer data base that will help in enforcing regulations and to serve as an information base available to appropriate groups.

III. Summary and Samples of the Questions and Answers

The following are examples of questions asked and answers by Mr. Latanich and Mr. Gross during the discussion period following their presentations.

Question: Is it true that the FTC prorate refund policy will apply to an hourly rate? What will the FTC require in the way of advertising and publication? Will the FTC regulations replace state law and why shouldn't the regulations apply to all?

Answer: With respect to the refund policy, the FTC recommendation applies for refunds on the basis of lesson by lesson or hour by hour. With respect to advertising and/or publication, a simple disclosure statement on placement will suffice. The FTC cannot apply regulations to all students, but it encourages the U.S. Office of Education to adopt similar policies.

Question: Does the FTC rule apply to profit-making degree-granting institutions?

Answer: No.

Question: Will the rule apply to public or non-profit institutions?

Answer: We cannot answer at this point as this is a complex issue.

Question: When will the 14-day "cooling-off" period apply?

Answer: The period begins with the date of acceptance of the student.

Question: Will this not give the student, under certain conditions, the opportunity to "rip off" the institution?

Answer: This may be true of a small percentage, but the FTC feels it is a proper rule.

Question: Has the FTC given any consideration to a statement on student responsibility in fulfillment of educational contracts?

Answer: We cannot think of an instance where the FTC would enter into this issue.

Question: Doesn't the FTC have a naive approach to placement rates as how can such rates be traced back to training.

Answer: Education is notorious for inaction and the FTC may be naive but feels it should do something however imperfect. It should be understood that the FTC rule will require job placement data only if the school makes claims about placement.

An additional comment (not question) from the floor noted that the Veterans Administration law requires a 50 percent placement disclosure from vocational schools and that other federal agencies have their own disclosure rules. It was urged that the problem be examined as this overlap of rule and the resulting conflict are difficult for the schools involved.

SUMMARY AND SYNTHESIS OF THE CONFERENCE*

(Revised from the oral presentation at the conference)

Thurston E. Manning
Commission on Institutions of Higher Education
North Central Association of Colleges and Schools

I. INTRODUCTION

This conference may be likened to a piece of architecture. There is a plan — the comprehensive and detailed American Institutes for Research (AIR) report by Steven Jung and his associates¹ that provides a variety of cross sections and views of the topic. There have been subcontractors — the distinguished speakers who provided a depth of knowledge on special topics. There has been a clerk-of-the-works — John Proffitt, who represented the builders to be sure that everything goes well. However, the heart of the construction was the contributions of those who attended the conference and participated in the extended discussion groups. I suppose the discussion leaders might be called the foremen and the conferees called the artisans who made the structure. Like artisans of the Middle Ages, each one did not confine himself to making a faithful representation of the plan, but rather provided a unique and singular elaboration.

There is a danger in allowing so many to work so freely on a structure. The result may be incoherent and even structurally unsound. But if the plan has been convincing, the subcontractors effective and the foremen communicative, then, like the artisans of the Middle Ages, we may have created a structure excellent in its outline, convincing in its detail and better than any single person could have done.

This analogy suggests that the task of summarizing the conference is not unlike the task of the architectural critic — to discover in the multiple detail certain pervasive themes and, having identified those, to show how they interact to form the details of the structure. In doing this, the critic must be careful not to add his own contribution (other than in interpretation). His obligation is to report and interpret, not to build the building. It should also be noted that no critic can comment or include all that occurred without failing in his obligation to summarize. Therefore, no artisan should feel abused if his or her prized contribution is omitted here.

The task of summarizing has been made easier by the skill of the discussion leaders in reporting the comments of the groups. Without that first synthesis of ideas it would have been impossible to prepare this final document.

II. THEMES

It is possible to discern in the discussions certain themes that recur in various combinations and permutations. They are enumerated here in random order, with no attempt to judge their relative importance.

Theme 1: Complexity.

One person mentioned to me in the hall that he hadn't realized how complex the issues of state oversight are. He admitted that until he got into the discussions he thought things were quite simple, but now he was confused and glad he didn't have to solve all the problems. The complexity theme is expressed in many ways, including the following:

1. *The structure of oversight in the several states.* The AIR report demonstrates clearly (and the reports from the discussions confirm) that the administrative organizations are widely different in the different states. Indeed, in some states there are no structures at all to deal with certain segments of postsecondary education.
2. *The heterogeneity of postsecondary institutions.* The United States has developed a postsecondary universe that displays a wide spectrum on any classification one can find. In size, institutions range from a dozen students to over 50,000. In purpose, institutions can seek to be as focussed as those that aim only to train good truck drivers, or as diffused as the universities whose programs range from remedial arithmetic to research on the origins of the universe. In financial resources, some institutions are explicitly bankrupt, while

¹Jung, Steven M., *A Study of State Oversight in Postsecondary Education*, Palo Alto, Calif.: American Institutes for Research, December 30, 1977.

* Reprinted from the *Summary and Synthesis of the Conference*, published by The Education Commission of the States, September 1978.

others preside over permanent endowments of millions of dollars.

3. *The philosophical stance of the conferees.* Some conferees advocate strong central control as a matter of principle while others advocate as free a competition as possible. Some feel certainty in their own minds and do not hesitate to express opinions unambiguously. Others believe that truth has not yet been revealed to them and speak with hesitation.

Examples need not be multiplied. The complexity of the issues, the resources, the people and above all of the postsecondary enterprise is obvious. It is a recurring theme in the discussions and it is a reality that prevents simplistic solutions to problems, however intellectually appealing such solutions may be.

Theme II: Evenhandedness.

This second theme flows from the first one. Throughout the discussions, along with the recognition of the complexities, was a dedication to fair play, often expressed as an unwillingness to give certain categories of postsecondary institutions special privilege or to treat other categories especially harshly. This was not, however, a simple insistence on uniformity, since there was recognition that uniformity of treatment is not fair if applied to different kinds of institutions. However difficult it is to be fair (and the discussions provided examples of the difficulties), there was throughout the discussions a dedication to that quality of fairness that one group called "evenhandedness," a striving for equality of treatment, while recognizing essential differences and not using irrelevant characteristics as the basis for discrimination.

Theme III: Acceptance of the Triad.

"Triad" carries the idea that oversight and improvement of postsecondary education involves three distinguishable groups — the federal government, the states and the institutions themselves as represented by their nongovernmental voluntary accrediting organizations. Among the conferees were those who wished the federal government would go away and get out of higher education, others who would like a freer market for education than some states have been willing to allow and still others who predicted an early demise to voluntary accreditation. Overall, however, the theme that ran through the discussion was that each component is currently here and reasonably strong and that each is going to continue to be a force within postsecondary education. Thus an acceptance of the presence of the triad colors much of the discussion, and is reflected in the themes that follow.

The triad concept was not always regarded as helpful and has been strongly criticized as being an over-

simplification. Nevertheless, the concept appeared repeatedly in the discussions and its utility was apparent. Perhaps the idea of the triad might best be regarded as a revelation of truth in need of a theology. The theology, of course, would have to explicate not only the connections among the components, but also the essential characteristics of each component. Some connections and characteristics found in the discussions included the following:

1. There is a need to recognize a necessary division of labor among the triad components. Accreditation is different from eligibility for federal funds. State authorization for an institution to operate is not the same as accreditation.
2. State authorization to operate is mandatory in states exercising such authorization. Neither eligibility for federal funds nor accreditation has that mandatory characteristic, although some conferees held that the pervasive need for funds and approval makes almost a fiction the claim that use of federal funds and accreditation is "voluntary."
3. Activities of various agencies within the federal government cause concern and confusion. Federal regulations (and here recent regulations promulgated by the Federal Trade Commission were explicitly mentioned in the discussions) conflict with state statutes and regulations. Federal recognition of accrediting agencies has affected the internal structures and activities of these private organizations.

Acceptance of the presence of the three components of the triad did not mean in the discussions that all was well with the world. Many examples were provided illustrating various weaknesses in each component and much attention was given to ways in which these weaknesses could be removed. It was clear that a lack of resources was a fundamental weakness in each component. While a lack of resources for the federal government seemed laughable to some, conferees remembered that only a short time ago the U.S. Commissioner of Education testified that one reason for difficulties with student loan programs was that insufficient administrative strength had been provided when these programs were established. There seemed to be no doubt in most minds that most of the states were not providing fully adequate administrative resources for the oversight of institutions, and data from the AIR report were cited in support. One conferee suggested that the accrediting agencies would not be able to fulfill paper expectations until their staffs were increased several fold.

At the same time, there seemed to be a recognition that a manifold increase in resources would not be

forthcoming, regardless of need. The "Proposition 13 phenomenon," understood as a deep reluctance of the public to provide further growth of government at any level, was often mentioned and was emphasized by John Phillips in his paper early in the conference.

Such considerations made more important the clarification of the proper roles of each triad component. Identifying what each can do best and dividing the work would be a technique for allocating scarce resources and accomplishing work at minimum expenditure levels.

Theme IV: Fundamental Nature of State Authorization.

This theme develops the idea of proper division of labor and appropriate interaction among the triad components. Recurring in the discussions was a recognition that each state has a fundamental obligation for the oversight of all education within its borders, an obligation that is constitutionally prohibited to the federal government and an obligation that cannot be exercised by the self regulation of accrediting associations that must rely on the voluntary joining together of institutions. Recognition that state authorization is fundamental leads at once to the understanding that it must be the precursor both to federal actions affecting institutions and to accreditation.

This fundamental nature of state authorization also places squarely on each state the obligation to see that its authorization is carried out in a responsible fashion. Two levels of responsibility were identified in the discussions: (1) having appropriate statutes and regulations, and (2) having appropriate and sufficient administrative strength for enforcement. The model legislation developed several years ago by the Education Commission of the States was cited as helpful for the first level. Some of the recommendations of the AIR report speak to the second.

Theme V: Credibility and Communication.

One of the discussion groups talked extensively about "gaps." This was the only group to use this word, but what it expressed found other forms in the discussions. A gap is an empty space and important gaps for the triad are the empty spaces of understanding and confidence among and within the components. It was clear in the discussions that persons from state agencies do not know how well, or even how, accrediting agencies worked. Nor do those from the federal government understand the problems and constraints affecting the daily activities of the states. Therefore, the accrediting agencies have mistrusted the actions of both the states and the federal government.

But if the triad is a reality, and Theme III expresses this, then its effective working through a rational division of labor requires that each component be credible. Credibility means more than presenting a

surface validity (that is, mere plausibility). Credibility means supporting the validity of policies and actions by evidence and sound logic. If, then, the components of the triad are to have credibility with one another, they must find ways by which they can muster not well-meant sentiments, but evidence of effective work.

Clearly better and more complete communication among the triad members is one way in which such evidence can be shared and the discussions strongly supported improved communication. Communication did not mean handouts of convenient information, but rather a full sharing of both successes and failures directed toward an appreciation and understanding of the strengths and weaknesses of the triad members. Also emphasized was a need for similar credibility within each triad component. The presence of multiple federal agencies affecting post-secondary education leads to a loss of federal credibility when, as has happened, the decisions of one agency contradict the positions of others. Accrediting agencies sometimes seem to have quite different policies, leading to confusion and loss of credibility. The statutes and regulations of the several states are so different that some have concluded that the states as a group are unreliable in the oversight of education.

This theme of credibility and the need for effective communication does not provide easy answers to the many problems identified. What emerged from the discussions was an awareness of gaps among and within the triad members and a willingness to seek ways of bridging these empty spaces and coming closer to establishing and recognizing the credibility of all the groups working to give appropriate oversight to education.

III. RECOMMENDATIONS OF THE AIR REPORT

Having identified some of the recurring themes of the structure constructed in the discussions of the conference, we turn now to consideration of specific elements of that structure, beginning with the recommendations of the AIR report which served as the fundamental plan.

1. *The U.S. Office of Education (USOE) should disseminate copies of the AIR report, including its "Technical Addendum," to all state agencies that express a desire to strengthen their laws and regulations.*

Such dissemination clearly improves communication and was supported by the conference. Indeed, one might question why the report should not be disseminated to all state and accrediting groups that are interested in it, or even to those that are not interested. However, the thrust of the recommendation

is that the dissemination should have an end other than mere broadcasting. Such a limitation is also reflected in the theme of effective communication that strengthens credibility.

2. *The USOE Division of Eligibility and Agency Evaluation should convene a workshop for staff of all state authorizing and oversight agencies, including those in both nondegree and degree-granting sectors, to go over the findings of this study and its implications for state agencies.*

This recommendation was also supported in the discussions. It bears on the fundamental nature of state authorization and the consequent need for each state to provide responsible authorization. Such a workshop would also assist in the communication among states and in finding more effective ways in which states can expend limited resources in carrying out the authorization activity. This seminar constitutes the first such workshop.

3. *USOE should begin to formulate an official policy statement encouraging all states to enact and enforce state authorizing and oversight standards that meet or exceed minimum consumer protection standards.*

In the discussions bearing on this recommendation there was an undercurrent, almost another theme, of mistrust of too much federal presence. Federal encouragement was generally welcomed; but the clause "meet or exceed minimum . . . standards" seemed to some to invite unwelcome federal specification of how states should behave and what standards they should embrace. Perhaps this is only an illustration of a credibility gap, but it was clear in more than one discussion group that the federal government needs to tread cautiously lest its encouragement step over into requirement. So long as the federal presence is limited to encouragement of the states, there was no loss of support for this recommendation. Perhaps the recommendation needs rewording to include explicit recognition of state autonomy and of the states' own concerns for consumer protection.

4. *USOE should strongly consider drafting and asking the Congress to pass an amendment to the general provisions of Title VI of the Higher Education Act of 1965, as amended, providing federal funds for states that have enacted standards more extensive than those in the ECS model legislation.*

On this recommendation the discussion groups, almost without exception, voiced great reservation. Some of it was related to the question of evenhandedness. Why should only states exceeding the model legislation provisions be eligible for federal funds? Some of it was related to the standard itself. What

makes the ECS model the touchstone, other than the absence of any other model? By far the greatest reservation was with respect to the principle implied in the recommendation that the states should look to the federal government for financial support of normal state activities. This principle was clearly rejected by the conferees. There were some who expressed great reservation about any continuing federal funding. As one conferee expressed it, "Every federal dollar comes with a string attached to it, and it's only a question of time before that string is jerked."

5. *USOE should establish and maintain a state licensing agency liaison center and clearinghouse.*

This is a recommendation that speaks directly to the theme of communication, certainly within the state component of the triad, and possibly also among all three components. The recommendation was strongly supported in the discussions. However, the theme of a proper division of labor was also heard in the discussions, with a clear conclusion that while federal encouragement and funding was desirable, federal operation (implied by "maintain" in the recommendation) was not. The alternative suggested was operation of the clearinghouse by a neutral party acceptable to all components of the triad, but certainly having the confidence of the states since it is state information that would be exchanged. Such organizations as the Education Commission of the States or various professional groups of state agency officials were suggested as possible clearinghouse operators.

6. *USOE should contract for the services of an organization of national reputation to plan and carry out a continuing program of staff development activities for state licensing agency personnel.*

Again a positive response to this recommendation was found in the discussion groups, the details echoing many already mentioned such as the desirability of federal encouragement, the need for states without extensive resources to provide proper administration of oversight activities and the necessity of increasing credibility and communication through better knowledge and experience. The recommendation's provision for training to be conducted by an organization apart from the federal government was strongly supported. A large number of conferees appeared to regard as a proper part of the federal activity the encouraging and stimulating (in part through funding) activities to be carried out by others. Here is another development of the idea of division of labor among the triad components.

7. *USOE should consider making more extensive use of the data collected during this study.*

While there was little indication that this recommendation received much discussion during the conference, it seems to be such good advice that few would argue with it. There was agreement that the data were reliable, except for changes since their collection.

IV. OTHER RECOMMENDATIONS FOR ACTION

The discussion groups did not confine their suggestions for future work to those suggested in the AIR report. Finding general agreement on additional recommendations for action was difficult because the groups had only highly informal communication among themselves. Nevertheless, there are some additional recommendations that seem to have widespread support:

1. *Because the data of the AIR report are valuable in the daily work of the three triad components, provision should be made to keep those data current.*

The AIR report may be likened to a "snapshot" of state oversight at one instant in time. What is needed for improved credibility and communication is "live coverage." Already, according to testimony in some discussions, the AIR data have been made obsolete by actions since they were collected.

2. *Because of the gaps in understanding and because of confusions of roles that have been identified in certain cases, there is need to make explicit the role of each component of the triad.*

To work toward an understanding of these roles it was suggested that a nongovernmental group undertake to formulate guidelines to distinguish the proper role of each component.

3. *While not a recommendation, there is clearly a general expectation that the U.S. Office of Education will give careful consideration to the results of this conference, particularly those recommendations for action and those comments about the concerns of the conferees that the proper federal role is not in operating accrediting or state approval activities, even at long distance.*

It is clear that the form of this conference was not that of a legislative assembly, coming together to debate propositions and proposals and concluding by voting approval of some and not of others. Rather, this was a conference given to free discussion of ideas, and its results, while we may call them recommendations, are really an agenda for action by others. Further,

while the conferees come from all parts of postsecondary education and all kinds of state and federal agencies, they are by no means the chosen representatives of their groups. Their opinions and conclusions, while important, cannot be said to bind or obligate others. In addition, the conference took place within only a particular few days, without the possibility of reflection between discussions.

This supports the wisdom of wide dissemination of the results of the conference, both to allow persons not present to consider and contribute to the issues and to give all of the conferees the opportunity for second thoughts. Indeed, it might be useful to convene another group to meet later and see whether the agenda formulated here can be further developed.

V. CONCLUDING COMMENTS

The preceeding sections represent a summary of the construction done at the conference. Like any critic, I have my own biases and opinions and like any good critic, I have tried to suppress them and report carefully what I observed, whether it was all I desired. The summary probably leaves out items of importance to some and emphasizes things of little importance to others. If any artisans are troubled that their important contributions — whether it is the design of the foundation or merely the joyful carved eagle wearing a frock coat that surmounts the pediment — has been overlooked, please remember that it wasn't done by design. To help remedy my omissions, the discussion leaders had the opportunity to report for each group.

One final comment: the length and content of this summary are testimony to the extent and depth of work by the members of the conference. Surely there have been few conferences at which the participants came earlier or stayed later than they did at this one. In fact, one of the problems was to terminate the discussion groups so that the leaders could report the results. And while we all enjoyed the amenities of the pleasant site and congenial friends, no one can say that we were on vacation, nor, I think, can anyone say that what was constructed is a mere vacation shack. It certainly needs further work, but I think there has been enunciated a basis for sound and effective oversight of our complex postsecondary education, resting on the ground of state authorization and building on a strengthened triad.

COMMENTS FROM THE WORK SESSIONS

1. The AIR report presented a complete view as of January 1, 1978 of state oversight of postsecondary education. The AIR report needs to be constantly modified, revised and updated as the situation changes. The proposed licensing center and clearinghouse should be instituted immediately to keep the information current.
2. Guidelines should be developed to delineate more clearly the functions of the various components of the triad. Such guideline development should be undertaken by a nongovernmental group with full consultation with representatives of the triad and other interested groups and citizens. These guidelines should attempt to delineate the roles and responsibilities of each triad element, e.g., what each triad member should do and how. The guidelines would help, for example, to distinguish between licensing, accreditation and recognition as these relate to eligibility for federal funds.
3. The proper role of federal funding in support of state oversight and accreditation is to provide stimulation, training, communication and facilitation of state and accrediting agency activities. It is not a proper function of federal funding to operate licensing and accrediting activities. Funding itself carries such power that the funder could easily become the operator. There is concern that while funding is needed, it should not be used to control operations. Rather it should take the form of incentives to the states to develop legislation at least equal to the Education Commission of the States' model legislation and to improve and expand agency activities to insure adequate oversight operations.
4. Although the conferees were representative of the postsecondary education community, they were not selected representatives of that community. The recommendations and proceedings should be sent to the broadest community possible in addition to the attendees.
5. Further refinement and specific action recommendations might be enhanced by a smaller follow-up meeting of key representatives of the state authorizing and agency accrediting communities and other concerned organizations involved in the conference.
6. State oversight in relation to consumer protection and institutional probity should be exercised in relation to all postsecondary institutions including satellites or branch campuses whether operated within the state or across state lines.
7. Problems of communication and coordination of state oversight and accrediting agency activities are frequently as crucial within the states as among states. Accordingly, states should be encouraged to bring together representatives of state higher or postsecondary education agencies, state oversight agencies, institutional and academic leaders and other interested parties to develop better lines of communication and to address common problems related to consumer protection, oversight, accreditation and other related issues.
8. While licensing is exclusively a state function, the U.S. Office of Education (USOE) and the Education Commission of the States (ECS) can facilitate better communication and encourage improvement in legislation and practice. ECS, with USOE support, should establish and maintain a licensing agency center and clearinghouse to improve licensing and monitoring procedures in the states and to provide an ongoing program for staff development.
9. Since the common concern of oversight and accrediting agencies is with responsible and qualitatively adequate education for students, students must not be lost sight of in oversight and accrediting activities.
10. Initially, there is need for a neutral nongovernmental body to stimulate the development of a cooperative and coordinated activity for state licensing and authorizing officers. Such a body should be funded to engage in the following tasks:
 - a. Reinforcement of self-sustaining organiza-

tions of state licensing and authorizing officers.

- b. Encouragement and assistance to such organizations in the formulation of sound mutually beneficial and useful policy and action agenda.
 - c. Encouragement of such groups to formulate and develop sound joint activities with the accrediting community, institutions and the appropriate agencies of the federal government.
11. With reference to the relationship between state licensing and authorizing agencies and accreditation, four observations should be noted:
- a. Closer communication is essential in order to provide the basis for improved cooperative action.
 - b. Further work is needed to improve standards including educational outcome measures as a common basis for licensing or authorizing and for accreditation. The documentation utilized in this process of developing standards should be a matter of public record.
 - c. Off-campus centers and branches are responsibilities both of the respective states and the regional and programmatic accrediting agencies. The accrediting groups must have adequate evidence for judgement of program quality if they are to be of value to the state licensing or authorizing agency involved. From the standpoint of state oversight agencies, off-campus operations of out-of-state institutions within the state must be considered

as new or additional institutions within the state.

- d. Joint visitations to institutions by accrediting and licensing/authorizing agencies where feasible and in the interests of both parties should be explored. In some instances this is currently taking place.
12. States should continue to work toward adoption of the ECS model legislation to cover basic educational authorization operations and to insure fundamental consumer protection in relation to all providers of postsecondary programs, but in other particulars they should adapt it to their own circumstances. At the same time, ECS should continue its efforts to formulate additional model legislation provisions to cover emerging problems in the field of consumer protection.
13. The information clearinghouse should also maintain current information on licensing and regulations of postsecondary education and make such information available to states wishing to improve their laws.
14. The U.S. Department of Defense and the states should work closely together in addressing the needs for education on military bases.
15. Education in relation to the military can be likened to a laboratory situation in that it represents a microcosm of all of education. The state bears a major responsibility for working with the military. There should be increased awareness and recognition of the problems of the military because of the scope and importance of the military programs to the states and the nation.

APPENDIX A

A STUDY OF STATE OVERSIGHT IN POSTSECONDARY EDUCATION:

Executive Summary of the Final Technical Report*

Steven M. Jung, Jack A. Hamilton, Carolyn B. Hellwell, Jeannette D. Wheeler
American Institutes for Research

I. Introduction

The state government functions of institutional authorizing and oversight were defined as "granting initial and continuing approval to postsecondary educational institutions to operate and offer educational services within the state." These functions were studied by the American Institutes for Research (AIR) under a contract to the U.S. Office of Education (USOE). USOE was concerned about state authorizing and oversight because of the importance of these functions in the "tripartite" institutional eligibility system for USOE-administered student assistance programs under Title IV of the Higher Education Act of 1965, as amended, and over 20 other federal programs of financial assistance to postsecondary education. In essence, this system requires institutions to be (1) state authorized, then (2) accredited by a USOE-recognized private accrediting body (or approved by a USOE-recognized state agency, for public vocational schools, or awarded social recognition by the U.S. Commissioner of Education) and (3) certified as eligible by the Division of Eligibility and Agency Evaluation (DEAE) of USOE.

The major focus of the AIR study was the degree to which state oversight provides student consumer protection by preventing or correcting abusive and potentially abusive institutional policies, practices and conditions, such as those listed in Table 1. Consumer protection has become a significant problem to USOE due to a number of well-publicized institutional abuses of students who were recipients of federal aid programs; these abuses have been the topic of several recent research studies and national conferences, all of which have called for efforts at strengthening the state role in authorizing and oversight of institutions. Prerequisites for such efforts were: (1) an in-depth profile of the strengths and weaknesses of state laws and enforcement resources and (2) specific suggestions for strategies that might be used to help state agencies acquire stronger laws and augment their enforcement resources. The present study, begun in July of 1976, was an attempt to provide such information.

II. Method

Three separate data collection efforts were carried out. First, all state education laws and regulations dealing with school authorizing and oversight were sought and, to the extent possible, obtained. Excluded from AIR's nine-month search were laws/regulations that: (1) dealt strictly with noneducational topics (e.g., state consumer protection laws), or (2) did not have statewide jurisdiction or (3) dealt with functions outside of AIR's definition of "institutional authorizing and oversight" (e.g., budget review and approval, program planning and coordinating, scholarship and loan program administration). It was estimated that the search, which included personal, mail and telephone appeals, resulted in acquisition of about 95 percent of the total existing set of documents. Obtained documents were abstracted into a standard format that allowed consumer protection provisions of the laws/regulations of all states to be analyzed and compared.¹

Table 1
Potentially Abusive Institutional Policies, Practices
and Conditions Representing Primary Focus of Study

1. Financial instability
2. Misleading advertising and recruiting practices
3. Inadequate disclosure of necessary information to students and prospective students
4. Inferior instructional programs and facilities
5. Inferior instructional faculty and staff
6. Inadequate recordkeeping policies and practices
7. Inadequate follow up of former students and inferior job placement services, if offered
8. Inadequate or nonexistent tuition and fee refund policies
9. Misleading representation of accreditation or approved status

* This executive summary and the report on which it is based were prepared pursuant to Contract No. 300-76-0377 from the Office of Planning, Budgeting and Evaluation, U.S. Office of Education, Department of Health, Education and Welfare. The opinions expressed, however, do not necessarily reflect the position or policy of the sponsor, and no official endorsement by the sponsor should be inferred.

¹ These abstracts were published as a separate, 900+ page product of the study.

Second, a telephone survey was carried out using specially designed questionnaires for state authorizing and/or regulating agencies. Separate questionnaires were developed for heads of all state agencies that (1) licensed private nondegree-granting institutions, (2) licensed private degree-granting institutions and (3) governed public nondegree and/or degree-granting institutions. Over 150 interviews were conducted, averaging over one hour apiece. In all, data were obtained from 184 agencies: 82 with licensing authority over private institutions and 102 with governance responsibility for public institutions.

Third, AIR staff conducted site visits to 20 states to obtain (1) estimates of the accuracy of the telephone interview data; (2) in-depth critical incidents of successful and unsuccessful attempts by state agency officials to prevent or correct abusive practices by postsecondary institutions; and (3) the perspectives of staff of state licensing agencies, consumer affairs, law enforcement and attorneys' general offices, legislatures, agencies that approve courses under contract to the Veterans Administration (VA) and "1202" commissions. In all, 100 officials were interviewed.

III. Results and Discussion

One of the most important findings of the study was that as of January 1, 1977, 48 states (including the District of Columbia) exercised some sort of licensing authority over private nondegree-granting institutions (only Missouri, Utah and Vermont did not). Thirty-eight states exercised specific licensing authority over traditional private degree-granting institutions, and five others had licensing laws for private nondegree-granting institutions that may cover degree-granting institutions under certain circumstances (only Alabama, Arizona, Iowa, Missouri, New Mexico, North Dakota, Utah and Washington had no licensing laws for traditional private degree-granting institutions as of January 1977).

Detailed charts were prepared, showing the provisions of each state's laws and regulations in 14 consumer protection-related categories such as those listed in Table 1. From these charts, summary tables were prepared, which also contained information on types of institutions covered or excluded from coverage by the laws/regulations, institutional licensing/bonding requirements, sales agent licensing/bonding requirements, monitoring and enforcement strategies and special provisions for treating out-of-state institutions. As one exam-

ple of the type of information provided in these summary tables, all of the 48 states with private nondegree-granting institutional licensing laws except one (Maine) have requirements or standards in the area of advertising, sales and recruiting practices; Vermont also has requirements in this area for sales agents. Eighteen states have provisions in the advertising/recruiting area for private degree-granting institutions. Only one state (Oregon) has laws with specific advertising provisions for public institutions. Of the 48 states with provisions for advertising in the private nondegree-granting sector, 40 explicitly prohibit false, inaccurate, deceptive or misleading statements or practices. Of the 18 states with provisions in the private degree-granting sector, 4 explicitly prohibit such statements or practices.

This example is illustrative of another major finding of the study: state authorizing/oversight requirements are much more extensive for private nondegree-granting institutions, less extensive for private degree-granting institutions and almost nonexistent for public institutions. In an effort to estimate more precisely the extensiveness of coverage in the private sector, ratings were made of the coverage of state laws/regulations in the 14 previously mentioned consumer protection categories. The coverage of model state legislation drafted in 1973 under the sponsorship of the Education Commission of the States (ECS) was used as a standard of comparison. A summary of the results of these comparative coverage ratings is presented in Table 2. Care must be taken to avoid the conclusion that the large numbers of zeros and minuses in Table 2 indicate some states have "inadequate" coverage. These are areas of state sovereignty, over which state governments retain the constitutional right to determine what is adequate for their needs. Nevertheless, the results provided evidence that improvement is possible in many states, to bring the coverage of their licensing laws and regulations up to a minimum standard represented by the ECS Model Legislation.²

Analyses of the dates of passage or modification of the laws/regulations rated in Table 2 illustrated a great deal of recent activity. Since 1975, 73 percent of the states have modified their private nondegree-granting laws/

² The ECS model legislation has no provisions in categories A, G and M. The model legislation represents a minimum standard because it was purposefully left very broad, with the intention that more specific standards and requirements would be added by states in the form of detailed implementing regulations.

Table 2

Summary of Coverage Ratings of State Licensing Laws
and Regulations in Comparison with ECS Model State Legislation*

	Private Nondegree-Granting					Private Degree-Granting				
	++	+	=	-	0	++	+	=	-	0
A. Institutional purpose, governance and operation	1	22	2	0	26	7	13	1	0	30
B. Course length, content, goals or objectives	4	23	11	2	11	3	12	10	1	25
C. Degree, diploma, credential or graduation requirements	1	6	24	1	19	3	13	6	1	28
D. Qualifications of instructional or administrative staff (including maximum teaching loads and teacher-pupil ratios)	9	23	6	5	8	5	15	5	2	24
E. Facilities (including instructional and administrative facilities and equipment, housing or room/board facilities, health and safety requirements)	1	11	18	13	8	1	16	7	3	24
F. Financial stability (including institutional performance bonds and financial record maintenance)	5	19	16	6	5	2	7	7	13	22
G. Minimum qualifications of potential students and orientation of entering students	2	24	4	0	21	0	18	2	0	31
H. Public disclosure of material facts (including fees and content of enrollment agreement or contracts)	13	12	8	14	4	2	7	3	8	31
I. Advertising or sales/recruiting practices (including minimum qualifications for licensing of sales representatives, and limitations on use of terminology such as "university," "approval," "admissions counselor," etc.)	20	13	9	7	2	2	1	4	17	27
J1. Student and personnel recordkeeping practices (including minimum requirements for content of students' records)	3	20	9	5	14	0	7	6	6	32
J2. Student and personnel recordkeeping practices (including minimum requirements for maintenance of students' records)	0	0	12	25	14	0	1	6	12	32
K. Financial practices (including procedures for making loan awards, requirements for fees and scholarships or aid requirements)	2	15	17	3	14	0	2	9	1	39
L. Minimum refund policies and practices	11	22	8	7	3	0	3	4	2	42
M. Placement (including follow-up data collection from former students, graduates, employers regarding posteducation outcomes)	3	12	15	0	21	0	7	0	0	44
N. Other topics of possible importance for student consumer protection	3	13	16	3	16	1	17	6	0	27
Totals	78	235	175	91	186	26	139	76	66	458

- ++ State has much more extensive coverage than ECS
 + State has more extensive coverage than ECS
 = State has equally extensive coverage as ECS
 - State has equally extensive coverage as ECS
 0 State has no coverage or no law

* State laws and regulations in effect as of January 1, 1977.

regulations and 68 percent have made modifications in the private degree-granting sector. Of most concern recently in the latter sector has been the problem of licensing degree-granting programs of institutions that are based outside the subject state, especially those of a nontraditional nature that offer academic credits for "life experience," individualized and nonstructured courses, use of community educational resources, etc.

Telephone interview data provided extensive information about enforcement mechanisms and resources. Among the more interesting findings were that: (1) about half of the states extend the term "proprietary schools" to private not-for-profit institutions as well as profit-seeking institutions; (2) agencies exercising oversight responsibility for private nondegree-granting (NDG) institutions license about three times as many institutions, on the average, as agencies in the private degree-granting (DG) sector (108.6 v. 31.5), but receive fewer revenues (\$141,868 v. \$263,834 annually)³ and have fewer full time equivalent staff (5.5 v. 15); (3) although they have fewer staff on the average, NDG agencies make school inspections visits more frequently (annually, on the average) than DG agencies (about every three and one-half years); (4) the NDG site visits are shorter (averaging less than one day each) than the DG site visits (almost two days each), but staff of both agencies attempt to apply fixed educational criteria and standards in most cases; (5) over half of all the private sector agency heads interviewed reported that "significant" numbers of institutions are exempted from oversight in their states, generally because the institutions are accredited, religious affiliated, avocational, older or subject to curriculum control through state professional licensing boards (e.g., barber and cosmetology schools); and (6) private sector officials in 23 states reported that some use had been made of the ECS model legislation during the past five years, in the process of making "significant" changes in their authorizing/oversight laws or regulations.

Almost all officials of private NDG agencies reported they had received student complaints (an average of 46) during 1976, while slightly more than half of the private DG agencies had received complaints (an average of 21), and few public agencies had received any complaints. These statistics were tempered by the fact that almost 80 percent of the private NDG agencies had formal student complaint-handling mechanisms, while fewer than 30 percent of the private DG agencies and public agencies had

such mechanisms. Complaint mechanisms usually required students to state their cases in writing. Almost all student complaints were followed up and resolved informally, using only the threat of formal action — fewer than 10 percent of the NDG agency complaints and 2 percent of the DG agency complaints actually became the basis for formal investigative or court actions. In 1976 a total of over 250 formal administrative actions and 32 court actions were reported by state agencies for institutional violations in the private NDG sector, while the corresponding figures in the private DG sector were 10 and 3. Only a small percentage (around 25 percent) of the private sector agencies supplied information to students on their rights as consumers of education, and a smaller percentage still (under 20 percent) made public the names of schools whose authorization to operate had been revoked or limited. Around half of the private sector agencies reported passing on to other states or to the U.S. Office of Education information about their investigative or enforcement actions.

Both the telephone interviews and the site visits provided data on state agency officials' perceptions of their needs for improving the state role in student consumer protection and barriers to meeting those needs and things the federal government might do to assist.

With regard to changes and resources needed by state agencies to improve the consumer protection function, there was general agreement that:

1. More staff members are needed, especially legal staff, to facilitate enforcement actions, and clerical staff, to free professional staff for more effective school monitoring.

2. Stronger laws and regulations are needed, especially to (a) eliminate provisions that now exclude accredited institutions from state agency oversight, (b) provide stronger bonding or tuition indemnification requirements, (c) provide and publicize statewide complaint handling systems and (d) improve the coordination and communications among the agencies that have various oversight responsibilities within states; and

3. Better communications and coordination are needed among licensing agencies in all states, especially in the degree-granting sector to deal with problems created by institutions that operate across state lines.

³ These average figures contain funds received from the Veterans Administration for course approving (generally in the NDG sector) and, occasionally, other nonoversight state agency functions (generally in the DG sector).

The chief perceived barriers to making these changes and obtaining these resources were:

1. Unwillingness of legislatures to make adequate appropriations for school oversight, due to a lack of understanding of the nature of the problem and general reluctance to approve funds for any forms of state regulation;
2. Strong and effective opposition by schools and accreditation bodies to increased levels of state agency oversight;
3. Lack of agreement and cooperation among state education agencies about which agency should perform what functions; and
4. Reluctance of law enforcement agencies and attorneys general to take strong action against educational institutions.

Almost without exception, state officials felt that the powers of the states should be preeminent in the area of student consumer protection, with the federal role limited to:

1. Providing more effective internal audits and controls over the federal student aid programs;
2. Providing a communications and clearing-house mechanism for the states, to allow state agency officials to better (a) share information on their enforcement actions concerning schools that operate in more than one state, (b) achieve more consistent standards and consequently more reciprocity agreements for licensing, and (c) learn from each other's successes and failures;
3. Provide workshops and technical assistance, including legal experts and research studies, that will allow all types of state agency officials to acquire new knowledge, skills and techniques for oversight;
4. Provide some federal operating funds, possibly on a matching basis, for supporting better state agency oversight, if that oversight is to play a role in the eligibility of institutions for federal programs; and
5. Exercise stronger controls over accreditation agencies that seek to become recognized by USOE, especially to prevent them from accrediting unevaluated branch campuses and off-campus programs.

IV. Follow-Up Implications

Based upon all of the obtained data and separate analyses of the states' and the U.S. office of Education's (USOE) needs for a stronger state role in improved institutional authorizing and

oversight for consumer protection purposes, AIR staff provided a number of follow-up recommendations.

For state agencies themselves, AIR especially noted as needed improvements:

1. The elimination of nontrivial exemptions from state licensing requirements for (a) accredited institutions, (b) institutions that are only indirectly overseen by state professional licensing boards (e.g., barbering schools, cosmetology schools, nursing schools, driver training schools), (c) older and well-established institutions and (d) institutions that are organized as nonprofit;
 2. The addition of consumer protection provisions to state laws for authorizing and oversight of private degree-granting institutions, resulting in greater standardization of licensing requirements across the private nondegree and degree-granting sectors;
 3. The development of procedures that require private and public schools domiciled out-of-state to meet the same licensing requirements as private schools domiciled in-state, especially in the degree-granting sector;
 4. The elimination of other major coverage gaps, as identified in relation to the coverage of ECS model legislation (see Table 2);
 5. Greater intrastate cooperation among agencies that have consumer protection responsibilities, especially between the private school licensing agencies and (a) law enforcement and attorney general offices, (b) state course approving agencies for the VA and (c) private school associations;
 6. Greater interstate communications and cooperation among private school licensing agencies, especially in the degree-granting sector; and
 7. Broader utilization of (a) better enforcement mechanisms to identify potentially abusive conditions, policies and practices in postsecondary institutions and (b) educational programs to enable students to become more effective consumers of education and complain more effectively if they encounter abuses.
- In carrying out such needed improvements, AIR staff provided several specific suggestions that appeared workable based on successful state experiences. Suggestions were provided in the areas of the political process, improved public relations and use of potential technical assistance resources from outside the state.

For the U.S. Office of Education, AIR noted the following implications.

1. *USOE should disseminate copies of the AIR*

report, including its Technical Addendum,⁴ to all state agencies that express a desire to strengthen their laws and regulations. Further, if updated information becomes available through later replications of the state agency survey, this information should also be disseminated.

2. *The USOE Division of Eligibility and Agency Evaluation should convene a workshop for staff of all state authorizing and oversight agencies, including those in the nondegree and degree-granting sectors, to go over the finding of this study and its implications for state agencies.* If possible, this workshop should be cosponsored by ECS and should include the participation of representatives of other national organizations concerned with improving the state licensing function. Possible topics to be discussed are suggested under staff development in point 6. Serious consideration should be given to making this workshop an annual event.

3. *USOE should begin to formulate an official policy statement encouraging all states to enact and enforce state authorizing and oversight standards that meet or exceed minimum consumer protection standards.* The minimum standards should be based on the ECS model state legislation, with provisions added in areas where the model legislation has no coverage.

4. *USOE should strongly consider drafting and asking Congress to pass an amendment to the general provisions section of Title IV of the Higher Education Act of 1965 providing federal funds for states that have enacted standards more extensive than the ECS model legislation.* The amendment, which would be similar to Title X of the now-expired National Defense Education Act of 1958,⁵ would provide state agencies with matching funds to be used in gathering objective, on-site data on the consumer protection policies, practices, and conditions of institutions that applied for eligibility for federal assistance programs. Determination of which states have met or exceeded minimum standards could be done annually by the U.S. Commissioner of Education via a small ad hoc advisory panel, as was done successfully under Section 435(c)(C) of the Higher Education Act of 1965. Eighteen states were identified whose licensing decisions were accepted, in place of accreditation, to establish eligibility of proprietary schools for guaranteed student loans prior to the origination of the national proprietary school accrediting bodies.

5. *USOE should establish and maintain a "state licensing agency liaison center and clearinghouse."* A major function of this center

would be (a) the frequent collection of information about publicly available state licensing agency actions, especially adverse actions with regard to schools, programs, school operators and agents, and (b) the dissemination of this information to state licensing agencies in all other states. Information that is not available to the public, such as on-going investigations, informal actions and temporary restrictions, or rumors, would not be collected or disseminated. Various dissemination mechanisms should be considered, including a newsletter, a WATS line, mailgrams, etc. These could also be a topic for the annual workshop. Because the center would also provide liaison with state agencies regarding the federal eligibility system, it could disseminate important new information on topics of interest to the states. It could also serve as the locus in USOE for planning and carrying out the staff development activities to be discussed in the next point.

6. *USOE should contract for the services of an organization of national reputation to plan and carry out a continuing program of staff development activities for state licensing agency personnel.* These activities might overlap with training activities carried out during the annual workshop, but they would be more extensive, based on detailed "needs assessments" and providing for special tailored regional or even statewide workshops. Major topics would be likely to include: (a) better procedures for licensing schools/programs/agents, (b) strategies for passing stronger laws and regulations, (c) strategies for obtaining increased enforcement resources and (d) more effective oversight of interstate educational operations.

7. *USOE should consider making more extensive use of the data collected during this study.* Even though AIR performed numerous analyses, these only scratched the surface of the analyses that might be performed. Examples of possibly useful secondary data analyses could be contributed by state agency staff at the workshop discussed in point 2. As an example,

⁴ This Technical Addendum contains: (1) the names, addresses and phone numbers of all state licensing governing agencies contacted in the study, (2) summaries of almost 200 critical incidents provided by state officials illustrating particularly successful or unsuccessful efforts to prevent or correct institutional abuses and (3) summaries of the data obtained during interviews with state agency officials, arranged according to the type of agency.

⁵ This title provided 50 percent matching funds to state education agencies for developing and improving state educational data collection procedures and statistical services.

it would be instructive to use the state survey data to create "indicators" of oversight practices that could be correlated with the number of agency actions or possible "effectiveness" ratings by a panel of experts. Promising indicators could then be used by state agency personnel to internally gauge their own effectiveness against these variables and take steps to improve their practices. The survey data now exist on computer tapes that could be made available to other researchers at very low cost.

For another example, the state law/regulation coverage areas that received "++" ratings in comparison to the ECS model legislation could be extracted to create a "composite state regulation," based on the model legislation but containing much more depth. Because it would

be based on recent sources, this composite regulation would also be more up-to-date than the 1973 model legislation, which is obsolete in a few of its provisions.

For a final example, it would be instructive to correlate data on coverage and "effectiveness" of state laws/regulations with other data from federal sources (e.g., DEAE, the Bureau of Student Financial Assistance) regarding the existence of potential institutional abuses in the federal student assistance programs (e.g. loan default rates, student complaints, fraud cases, etc.). The demonstration of a relationship would strengthen the rationale for further federal interest in improving state authorizing and oversight of postsecondary educational institutions.

APPENDIX B

PARTICIPANTS LIST

State Postsecondary Education Institutional Authorization and Oversight:

A National Report and Inservice Education Program

Four Seasons Motor Inn

Colorado Springs, Colorado

July 11-14, 1978

FRANK N. ALBANESE
Executive Secretary
State Board of School and College
Registration, Ohio

GERALD O. ALLEN
Chairman
State Board of School and College
Registration, Ohio

MERLIN ANDERSON
Administrator
Commission of Postsecondary
Institutional Authorization, Nevada

GEORGE ARNSTEIN
Educational Consultant
Veterans Administration,
Washington, D.C.

DEAN E. ASCHIM
President
National Association of State
Approving Agencies

THOMAS W. BALLS
President
Nashville Auto Diesel College,
Tennessee

GRAEME BAXTER
Assistant Commissioner for Executive
Operations
U.S. Office of Education

JAMES F. BEMIS
Executive Director
Commission of Colleges
Northwest Association of Schools and
Colleges

ROBERT H. BERLS
Program Analyst
U.S. Office of Education

SARAH BORNEMAN
Associate Supervisor
Bureau of Special Occupational
Education Services
New York State Education
Department

THE HONORABLE OTIS R. BOWEN
AND MRS. BOWEN
Governor of Indiana

SYLVIA E. BOWMAN
Special Assistant to the President for

Extended Studies Program
Indiana University System

MARILYN BRACHTENBACH
Senior Research Analyst
Higher Education Committee
Washington State Senate

WALTER J. BROOKING
Education Program Specialist
U.S. Office of Education

MARY BROWN
Division of Eligibility and Agency
Evaluation
U.S. Office of Education

GEORGE T. BRUNER
Assistant State Supervisor
Private Vocational Schools
Colorado State Board for Community
Colleges and Occupational
Education

ROBERT BULLOCK
Assistant Attorney General in Charge
of Consumer Protection
Office of the Attorney General,
Kentucky

JANET L. BUNTEBART
Acting Chief, Certification Section
Bureau of Student Financial
Assistance
U.S. Office of Education

SUSAN S. BURCAW
Director
Continuing Education
University of Idaho

JAMES E. BURNS
Chief
Proprietary School Bureau
Department of Business Regulation,
Montana

ANGELO CHRISTOPHER
Director
Colorado Springs Military Program
Regis College, Colorado

JOSEPH A. CLARK
President
Joseph A. Clark Associates, Indiana

WILLIAM C. CLOHAN, JR.
Assistant Education Counsel, Minority

Staff
Education and Labor Committee
U.S. House of Representatives

ROBERT F. CORCORAN
Special Assistant to the Governor for
Education, Illinois

JOHN F. COREY
Assistant Vice President
Student Services and Special
Programs
The University of North Carolina

HAROLD CROSBY
President
Florida International University

RUTH W. CROWLEY
Chief, Occupational School Eligibility
Section
Division of Eligibility and Agency
Evaluation
U.S. Office of Education

GEORGE V. CRUZ
Member, Board of Regents
University of Guam

IRVING E. DAYTON
Deputy Commissioner for Academic
Affairs
Montana University System

HADLEY S. DEPUY
Deputy Commissioner for Higher and
Professional Education
New York State Education
Department

NORMAN B. DODGE
Assistant Director
Colorado Commission on Higher
Education

C. L. DOLLARHIDE
Deputy Director
Education and Rehabilitation Service,
Department of Veteran Benefits
Veterans Administration

VANIK S. EADDY
Assistant Program Director
State Approving Agency
Alabama Department of Education

THOMAS A. EMMET
Special Assistant to the President
Regis College, Colorado

EARL R. EDWARDS
Director
State Board of Independent
Postsecondary Vocational,
Technical, Trade and Business
Schools, Florida

WARREN D. EVANS
Coordinator of Private and
Professional Institutions and
Specialist for Chartering
Pennsylvania Department of
Education

ARTHUR M. FELDMAN
Director
Education Approving Agency
New Hampshire Department of
Education

LARRY S. FEWELL
Program Officer
Ohio Board of Regents

KENNETH C. FISCHER
Director
Postsecondary Education Convening
Authority
Washington, D.C.

WILLIAM A. FOWLER
Executive Secretary
Accrediting Commission
National Home Study Council

C. WAYNE FREEBERG
Executive Director
State Board of Independent Colleges
and Universities, Florida

CARROLL V. GALBREATH
Director
Division of Education Services
USOE Region VI, Texas

JANET GALLIN
Montessori School
Boulder, Colorado

ANDREW GASPERECZ
Director
Proprietary Schools
Louisiana State Department of
Education

JOAN GIVENS
Education Program Specialist
Division of Eligibility and Agency
Evaluation
U.S. Office of Education

W. A. GODDARD
Executive Director
National Association of Trade and
Technical Schools

LUIS E. GONZALEZ-VALES
Executive Secretary
Council on Higher Education, Puerto
Rico

WALTER C. GROSS, III
Staff Attorney
Bureau of Consumer Protection
Federal Trade Commission

PAUL GULYAS
Assistant Director
Alaska Commission on Postsecondary
Education

MARTINE HAMMOND
Project Associate
Project CHOICE
Syracuse University, New York

DAVID F. HANSON
Specialist
Accreditation and Approval
Higher Education Management
Services, Michigan

FRED F. HARCLEROAD
Chairman
Accrediting Commission
National Home Study Council

LINDA HILL
Committee on Accreditation &
Institutional Eligibility, New Jersey

HARRIET HOLLANDER
Director
Corrections Project
Rutgers Medical School, New Jersey

T. EDWARD HOLLANDER
Chancellor
Department of Higher Education, New
Jersey

THE HONORABLE WALLY HORN
State Representative, Iowa

GEORGE R. HUNTER
Director
Veterans Education and
Postsecondary Education
Tennessee State Department of
Education

ELIZABETH JOHNSON
Member
Oregon Educational Coordinating
Commission

PAMELA JOHNSON
Executive Associate
Joseph A. Clark Associates, Indiana

STEVEN M. JUNG
Senior Research Scientist
American Institutes for Research in
the Behavioral Sciences, California

ANN KELLEY
Manager of Institutional Approval and
Consumer Affairs
Minnesota Higher Education
Coordinating Board

LEE R. KERSCHNER
Executive Director
Colorado Commission on Higher
Education

HOWARD P. KILLMER
Supervisor, Private Schools
State Board of Community Colleges &
Occupational Education, Colorado

ROBERT KIRKWOOD
Executive Director
Commission on Higher Education
Middle States Association of Colleges
and Secondary Schools

BARBARA KNUDSON
Department of Criminal Justice
University of Minnesota

ALAN S. KRECH
Coordinator of Research
South Carolina Commission on Higher
Education

SHERRY P. LANCASTER
Coordinator
Institutional Review and Approval
State Council of Higher Education for
Virginia

DOUGLAS E. LARSON
Assistant Supervisor
Minnesota Department of Education

TERRY LATANICH
Staff Attorney
Bureau of Consumer Trade
Federal Trade Commission

PATRICK LAUGHLIN
Member
Advisory Committee on Accreditation
and Institutional Eligibility
U.S. Office of Education

NORA JEAN LEVIN
Member
Advisory Committee on Accreditation
and Institutional Eligibility
U.S. Office of Education

ARTHUR LEVINE
Senior Fellow
Carnegie Council on Policy Studies in
Higher Education

TED LITTLE
Executive Director
Kentucky Board for Proprietary
Education

P. ALISTAIR MacKINNON
Assistant to Commissioner of
Education
New York State Education
Department

GENE MAEROFF
New York Times

JAMES R. MANNING
Supervisor
Proprietary School Service, Virginia

THURSTON E. MANNING
Director
Commission on Institutions of Higher
Education
North Central Association of Colleges
and Schools

ROBERT E. MARTIN
President
Independent Colleges and Universities
of Indiana

MYRA MASON
Assistant Commissioner for
Administrative Services
Indiana Commission for Postsecondary
Proprietary Education

ROY E. McDERMOTT
Manager
Nonpublic School Approval Section
Illinois Office of Education

JOE McFARLAND
Academic Officer
Kansas Board of Regents

BERNARD MICHAEL
Executive Director
Federal Interagency Committee on
Education
U.S. Office of Education

BARBARA MICKEY
Vice President of Academic
Development & Evaluation
University of Northern Colorado

RICHARD MILLARD
Director
Postsecondary Education Department
Education Commission of the States

N. EDD MILLER
President
University of Maine, Portland-Gorham

CARMELO JOSÉ
CRISTÓBAL-MIRANDA
Assistant to the Executive Secretary
Council on Higher Education, Puerto
Rico

DAVID MIRSKY
Yeshiva University, New York

KRISTIN MORRISON
Member
Advisory Committee on Accreditation
and Institutional Eligibility
U.S. Office of Education

ALFRED L. MOYÉ
Deputy Commissioner for Higher and
Continuing Education
U.S. Office of Education

PETER MUIRHEAD
Former U. S. Deputy Commissioner of
Education

JAMES F. NICKERSON
Director
Servicemen's Opportunity College

GEORGE J. NOLFI
President
University Consultants, Inc.,
Massachusetts

HAROLD ORLANS
Senior Research Associate
National Academy of Public
Administration

JOHN C. ORR
President
College of St. Francis, Illinois

KEITH GARLAND PAILTHORP
Associate Coordinator
Washington Council for Postsecondary
Education

CLYDE PEARCE
Section Administrator
Standards for Public and Proprietary
Schools
Georgia Department of Education

JOHN H. PETERSON
Chief
Office of Private Postsecondary
Education, California

LAWRENCE K. PETTIT
Commissioner of Higher Education
Montana University System

JOHN PHILLIPS
President
National Association of Independent
Colleges and Universities

SUSAN POWELL
Director
Program Planning & Coordination
Minnesota Higher Education
Coordinating Board

JOHN R. PROFFITT
Director
Division of Eligibility and Agency
Evaluation

Bureau of Postsecondary Educati
U.S. Office of Education

STERLING PROVOST
Coordinator for Veterans Educati
Utah State System of Higher
Education

RONALD PUGSLEY
Chief
Accrediting Agency Evaluation
Branch
U.S. Office of Education

R. WAYNE RICHEY
Executive Secretary
Iowa State Board of Regents

NANCY ROSE
Board of Directors
American Montessori Society

ROBERT ROSS
Academic Director
University of Northern Colorado

PHILLIP H. ROUSH
Commissioner
Indiana Commission for Postsecondary
Proprietary Education

W. A. RUMBAUGH
Director
Postsecondary Authorization
Kansas State Department of
Education

WENDELL P. RUSSELL
Chariman
Postsecondary Education Commission,
Washington, D.C.

SAUNDRA K. SANDBLOM
Owner
Arizona Automotive Institute

ALAN SCHIFF
Assistant Branch Chief/Eligibility
U.S. Office of Education

WILLIAM SELDEN
Consultant, New Jersey

MONTE P. SHEPLER
Deputy Commissioner
State Board for Higher Education,
Maryland

JOHN SPERLING
President
University of Phoenix, Arizona

J. P. STEELE
American College of Radiology, South
Dakota

MILTON R. STERN
Dean
University Extension
University of California, Berkeley

DAVID R. STUCKI
Executive Secretary
Wisconsin Educational Approval
Board

KENNETH J. TELLIER
Director
Navy Campus for Achievement
Chief of Naval Education and
Training

E. E. THRASH
Executive Secretary and Director
Board of Trustees of State Institutions
of Higher Learning, Mississippi

ROBERT TOREN
Executive Secretary
Accrediting Commission
Association of Independent Colleges
and Schools

FRANK A. TREDINNICK, JR.
Executive Vice President
Association of Independent Colleges
and Universities of Massachusetts

CLIFFORD M. TRUMP
Deputy Director for Academic
Planning
Idaho State Board of Education

IKPE B. UDOFIA
Director
Private Vocational Schools & Veterans
Education
Nebraska State Department of
Education

THE HONORABLE JOHN E.
ULIBARRI
State Representative, Utah

MICHAEL USDAN
Commissioner of Higher Education
Board of Higher Education,
Connecticut

BERNIE WAREN
Deputy Director
Illinois Board of Higher Education

THE HONORABLE KEITH C.
WARNER
Utah State Senator

DENNIS P. WITTENBERG
Assistant Director
Florida State Board of Independent
Colleges and Universities

RICHARD WOOD
Executive Director
UNC/CSAP
University of Northern Colorado

JOHN C. WRIGHT
Vice Chancellor and Director of
Academic Affairs
West Virginia Board of Regents

KENNETH E. YOUNG
President
Council on Postsecondary
Accreditation

RICHARD YTURREGUI
Executive Secretary
Postsecondary Education Commission
Maine Department of Educational and
Cultural Services

ROBERT ZIMMER
Director
Postsecondary Education
Office of the Assistant Secretary of
Defense



The Education Commission of the States is a nonprofit organization formed by interstate compact in 1966. Forty-six states, American Samoa, Puerto Rico and the Virgin Islands are now members. Its goal is to further a working relationship among governors, state legislators and educators for the improvement of education. This report is an outcome of one of many commission undertakings at all levels of education. The commission offices are located at Suite 300, 1860 Lincoln Street, Denver, Colorado 80295.

It is the policy of the Education Commission of the States to take affirmative action to prevent discrimination in its policies, programs and employment practices.